

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
CORAM**

RESERVED ON : 27.03.2017

DELIVERED ON : 15.06.2017

THE HON`BLE MR.JUSTICE T.RAVINDRAN

**T.O.S.No.8 of 2004
in
(O.P.No.684 of 2003)**

1. A.S.Rathinasabapathy
2. Kalpana
3. Sujatha
4. Pramila

..
Vs.

Plaintiffs

1. P.Madan Mohan
2. Komala Krishnamoorthy
3. P.Sasikala (unmarried mentally
unsound represented by Court
Guardian and sister
Mrs.P.Komala Krishnamoorthy)

(Defendants 2 & 3 impleaded as
per order made in Appl.No.2640/2004
dated 16.07.2004 and the delay was
condoned as per order dated 07.10.2004
made in Appl.No.3821 of 2004)

4. Geetha Kumar
5. Swetha Kumar
6. Shri.P.Basant Kumar
7. Sathiya Ranganathan
8. Usha Rathnam
9. Sanjana
- 10.Devina

(D4 to D10 impleaded as per
order dated 22.09.2011 in
Appl.No.2974 of 2011).

11.Ranganathan
 12.Nishali Ranganathan
 13.Pranali ranganathan

(D11 to D13 brought on record
 as LR's of Deceased **7th Defendant**
 by order dated 22.09.2016 in
 Appl.No.4004 of 2016 in TOS 8/2004). .

Defendants

Original Petition No.684 of 2003 was filed under Sections 232, 255 and 276 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration. Against this petition a Caveat was filed on 07.02.2004 by the Caveator. As per order of this Court dated 19.03.2004 in O.P.No.684 of 2003, the Original Petition No.684 of 2003 was converted into Testamentary Original Suit No.8 of 2004.

For Plaintiffs : Mr.J.Nandagopal

For defendant : Ms.Chitra Sampath,
 No.1 Senior Counsel
 for M/s.T.S.Baskaran

For defendant : Mr.V.Premkumar
 Nos.2 & 3

For defendant : Mr.T.Viswanatha Rao
 Nos.4,5,6,8 to 10

J U D G M E N T

The petitioners/plaintiffs filed a petition in O.P.No.684 of 2003 under sections 232, 255 and 276 of the Indian Succession Act, 39 of 1925 and under Order 25 Rule 5 of the Rules of the Original side of the High Court, Madras for the grant of letters of administration in the

matter of the last Will and Testament dated 08.09.1960 of Smt.Meenakshi Sundarammal @ Mrs.P.M.Jayaram, the deceased. As against the said petition, a caveat was filed by the Caveator/first defendant P.Madan Mohan on 07.02.2004 with the supporting affidavit. Thereafter, the above said original petition had been ordered to be converted into Testamentary Original Suit and accordingly, TOS.No.8/2004 has come to be registered.

2. The defendants 2 and 3, in the above said Testamentary Original Suit, had been impleaded as per the order dated 16.07.2004 in Application No.2640/2004. The defendants 4 to 10 had been impleaded in the Testamentary Original Suit as per the order dated 22.09.2011 in Application No.2974/2011. The defendants 11 to 13 had been brought on record as the legal representative of the deceased 7th defendant vide order dated 22.09.2016 in Application No.4004 of 2016.

3. The averments contained in the plaint are briefly stated as follows:-

Meenakshi Sundarammal @ Mrs.P.M.Jayaram, Widow of late Pattur Jayaram Mudaliar, died on 12.09.1989 at her residence bearing

Door No.235, R.K. Mutt Road, Mylapore, Chennai and while she was in a sound and disposing state of mind, duly executed a Will and testament on 08.09.1960 in the presence of two witnesses, namely P.S.Arunachala Mudaliar and A.C.Manicka Mudaliar, who have duly attested the said Will. The said document, which is the Last Will and Testament of Meenakshi Sundarammal @ Mrs.P.M.Jayaram, had been deposited by her in the office of the Sub-Registrar, North Beach Road, Madras and kept in that office, in a sealed cover. The said Will is marked as letter - A. The testatrix has appointed her father A.R.Somasundara Mudaliar and their family friend and retired Subordinate Judge K.Narayanasamy Mudaliar as Executors under the aforesaid Will and testament. The testatrix had bequeathed the properties described in schedule - A to the said Will to her first younger brother A.S.Sundararaman for life and after his death, to his legitimate male descendants absolutely and in the absence of any male descendant, to his legitimate female descendant absolutely. The aforesaid A.S.Sundararaman died on 11.05.1999 leaving behind the first petitioner/plaintiff as his only male descendant. Out of the total extent of 32 grounds in Schedule "A" to the Will, the testatrix, during her lifetime, had sold away certain portions and the remaining extent is set out as item Nos.1 and 2 in the "A" schedule hereunder and the

same measures in total 8 grounds and 1384 sq.ft. The first petitioner/plaintiff as the residuary legatee under the aforesaid Will is absolutely entitled to item Nos.1 and 2 described in the "A" schedule hereunder. The testatrix had bequeathed the properties set out in Schedule "B" to the Will, to her second younger brother A.S.Ekambaram for life and after his death, to his legitimate male descendants absolutely and in the absence of male descendant, to his legitimate female descendants absolutely. The said A.S.Ekambaram died leaving behind no male descendant on 27.12.1981. The petitioners/plaintiffs 2 to 4 are his daughters, who are the absolute residuary legatees in respect of "B" schedule properties in the Will. Out of the "B" schedule properties in the Will, the testatrix, during her life time, had sold item No.8 therein and the remaining items are set out as Item Nos.3 to 9 in the Schedule "A" hereunder. The petitioners 2 to 4 being the residuary legatees, are entitled absolutely to the properties set out as item Nos. 3 to 9 in the schedule "A" hereunder. The testatrix had, during her life time, created a Trust in respect of "B" schedule properties for the purpose of morning Uthsavam on Vaikunda Ekadasi day every year in Sri Parthasarathy Temple, Triplicane and during her life time, she was holding the said properties in trust and was carrying on the trust. Under the aforesaid Will, the testatrix has

appointed her two younger brothers A.S.Sundararaman and A.S.Ekambaram as trustees, after her life time and has laid down that after their death, the eldest member of the family shall be the trustee. The two executors, namely, A.R.Somasundaram Mudaliar and K.Narayanasamy Mudaliar are dead. The two attestors of the above Will are also no more and hence, no affidavit could be procured from them. The Third party affidavit is filed.

4. The petitioners/plaintiffs state that the persons listed in Sl.No.1 to 18 in the plaint are the Next of kin of the testatrix with relationship as on date. The petitioners/plaintiffs could not trace the original Will till recently and only in the month of November, 2001, they were able to ascertain that the Will executed by the testatrix had been deposited by her in the office of the Sub-Registrar, North Beach Road, Madras and a copy thereof was obtained and produced along with the petition. Hence, there is delay in filing the petition. The original Will is still in the office of the Sub-Registrar, North Beach Road, Madras and the petitioners are moving the Court to issue a direction to the Sub-Registrar, North Beach Road, Madras, for producing the said Will before the Court and keep it in a sealed cover under safe custody. The petitioners\plaintiffs have not moved any

application in any District Court or delegate or any other High Court for probate of the aforesaid Will of the testatrix or for letter of administration of her estate with or without the above Will annexed. The petitioners\plaintiffs state that the value of the estate of the testatrix described in the schedule "A" hereunder comes to Rs.2,47,00,000/- as on date and the net amount also the same and an affidavit to this effect and a valuation of the estate, in duplicate, in the form setforth, are produced and as the "B" schedule property is held in trust, they are not liable to pay any fee under the provisions to Section 56 of the Court Fees Act. The petitioners undertake that if they are granted the letters of administration with the Will annexed, they will duly administer the estate in accordance with the terms of the last Will and testament of the testatrix by paying first her debts and the legacies bequeathed and exhibit the same in this Court within 6 months from the date of grant of letters of administration, and also to render to this Court a true account of the said property and credits within one year from the said date. Hence, the petitioners prayed to issue letters of administration with the Last Will and testament dated 08.09.1960 of the testatrix, the deceased Meenakshi Sundarammal alias P.M.Jayaram annexed having effect through out the state of Tamil Nadu limited to the properties mentioned in the affidavit of assets.

5. The averments contained in the written statement filed by the first defendant are briefly stated as follows:

The petition laid under section 232, 255 and 276 of the Indian Succession Act for grant of Letters of administration in the matter of Last Will and testament dated 08.09.1960 of Meenakshi Sundarammal @ P.M.Jayaram is not maintainable in law and the said petition laid in respect of the aforesaid Will of the testatrix, who admittedly died 15 years back in 1989, without giving any justifiable reason as to why they did not chose to act 15 years back and on the ground of lapses and latches, the petition is liable to be rejected. The petitioners/plaintiffs have suppressed material information and also relevant facts and fabricated a story as if they are entitled to seek the letters of administration in respect of the Will of testatrix dated 08.09.1960. The Will appears to be not a genuine one and invented for the purpose of the case, with a view to make unjustified claim in respect of the properties not bequeathed to the petitioners/plaintiffs. The properties described in Schedule A and B, originally belonged to Thiruvengada Mudaliar, who had three sons, namely P.Jayaram Mudaliar, Nagarathna Mudaliar and Parthasarathy Mudaliar. The properties of the aforementioned family were divided into three shares

vide registered partition dated 17.05.1944, P.Jayaram Mudaliar died in the year 1943 itself. Meenakshi Sundarammal, wife of P.Jayaram Mudaliar was given only a limited estate under the partition deed. After her death, the properties reverted back to the legal heirs of the husband of Meenakshi Sundarammal. The petitioners/plaintiffs were not the legal heirs of P.Jayaram Mudaliar and therefore, they have absolutely no locus standi to maintain the petition. The Will is surrounded by several suspicious circumstances. The Will is supposed to be of the year 1960 alleged to have been executed 29 years before the death of the testatrix. In the said span of 29 years, many things had happened, which would totally negate the various bequests under the so called Will. Meenakshi Sundarammal @ P.M.Jayaram had two brothers namely Sundaram and Ekambaram and one of the brothers Ekambaram admittedly died on 26.09.1981, i.e. almost 8 years before the death of the testatrix and if the recitals in the Will are true, immediately on the death of Ekambaram, steps would have been taken to execute a Codicil or fresh Will, because as per the recitals of the alleged Will, Ekambaram was given only life estate and after his death, his legitimate male descendants and in the absence of any male descendants, his female descendants would get the properties. The very fact that no steps were taken in 1981, to change the recitals of

the Will or in 1989 on the death of testatrix to obtain probate or letters of administration would expose the falsity of the claim of the petitioners/plaintiffs and would throw cloud on the genuineness of the Will. The other brother of the testatrix also became an ascetic and took Sanyasa and therefore cannot get possession of the property and therefore, the bequests in favour of the brothers and children were not executable. The petitioners/plaintiffs cannot claim letters of administration. The petitioners were all born 34 years back as seen from the age of the petitioners and the testatrix would have known that there was no male heir to Ekambaram and Sundaram and when so many circumstances had changed, the claim of the petitioners that the Will dated 08.09.1960 is a genuine and true one cannot be accepted and the same is liable to be rejected. The legal heirs of the husband of Meenakshi Sundarammal have taken several steps to take charge of the properties belonging to the estate of P.Jayaram Mudaliar right from 1989 onwards, which was subjected to the limited life estate of Meenakshi Sundarammal and in such view of the matter, the petitioners/plaintiffs cannot pretend ignorance of the various steps and family arrangements entered by and between all the legal heirs of Meenakshi Sundarammal's husband P.Jayaram Mudaliar. There were also certain Court proceedings and the petitioners even though were

aware of the same had filed the present petition laying a false claim on the basis of the alleged Will. For the first time, an advertisement appeared in Indian Express in the name of 8 persons stating that they are all absolute owners of the various properties described therein and even in the said public notice, there were no references to the Meenakshi Sundarammal or P.Jayaram Mudaliar or the Will of Meenakshi Sundarammal. Only after the defendants disputed their claim and sent a reply stating that Meenakshi Sundarammal died intestate and she had no children and that, the heirs of her husband had divided the estate as per the family arrangement, the petitioners\plaintiffs have come forward with this false claim. The aforesaid family arrangement was acted upon and the deceased had only a limited estate and she enjoyed the limited income and had no alienable right or bequeathable interest. Even she filed a suit in the year 1957 and in that suit, she claimed only title deeds in respect of the properties. If the Will of Meenakshi Sundrammal is a genuine one, she should have made the reference about the said suit in the Will but there is no reference about the same. The petitioners/plaintiffs have not cared to explain the delay in filing the petition i.e. after 14 years after the death of Meenakshi Sundrammal. The petitioners are not entitled to seek the letters of administration and the deceased

Meenakshi Sundarammal had no bequeathable interest in any of the properties of her husband. The defendant does not admit the truth and genuineness of the Will dated 08.09.1960 and only with a view to grab the properties, the petitioners/plaintiffs have come forward with the case and hence, the suit is liable to be dismissed.

6. The averments contained in the additional written statement filed by the first defendant are briefly stated as follows:

The defendant, on perusing the copy of the Will obtained, denied the due execution and valid attestation of the alleged Will dated 08.09.1960. There is no attestation of the alleged Will by two witnesses as contemplated under Section 69 of Evidence Act. The defendant specifically deny the genuineness of the signature which appears in the alleged Will as that of Meenakshi Sundarammal. The Will is a rank forged document. The defendant denies that there has been any deposit of the Will by the testatrix on the alleged date and that it was received as document No.18/60 on 08.09.1960 on the file of District Registrar, Chennai North. The defendant has also denied that the Will alleged to have been received as document No.18/60 had been registered as document No.31/1992 on 16.03.1992. The

defendant denies the correctness and genuineness of the fact of deposit of alleged Will and the registration and hence, the suit is liable to be dismissed.

7. The averments contained in the written statement filed by the defendants 2 and 3 are briefly stated as follows:

The suit properties belonged to Late.P.Thiruvengada Mudaliar, the paternal grandfather of the Defendants 2 and 3. He had expired in the year 1931 intestate. His wife name was Mangaiyarkarasi Ammal and they were blessed with three sons, namely, P.Jayaram Mudaliar, P.Nagarathna Mudaliar and P.Parthasarathy Mudaliar. P.Jayaram Mudaliar expired in the year 1943 issueless and intestate. P.Nagarathna Mudaliar, P.Parthasarathy Mudaliar, Meenakshi Sundarammal @ P.M.Jayaram, the widow of P.Jayaram Mudaliar and Mangaiyarkarasi Ammal, the widow of P.Thiruvengada Mudaliar entered into a registered partition deed of the family properties dated 07.05.1944 and the properties listed in the Schedule "A" thereto fell to the share of P.Nagarathina Mudaliar and the properties listed in the schedule "B" thereto fell to the share of P.Parthasarathi Mudaliar. Meenakshi Sundarammal @ Mrs.P.M.Jayaram , who is also a signatory

to the above said partition deed, committed herself to the terms and conditions of the same and she had been given limited estate in respect of the properties falling to her share given in "C" schedule. Meenakshi Sundarammal had also been directed not to commit any act of waste to the properties or danger to the reversioner. Meenakshi Sundarammal @ Mrs.P.M.Jayaraman died on 12.09.1989 issueless and intestate and on her death, the properties in "C" schedule thereto automatically went to the reversioners i.e. P.Nagarathina Mudaliar and P.Parthasarathi Mudaliar and apart from them, there were no other direct legal heirs to succeed to her estate. On the death of Meenakshi Sundarammal, her estate devolved in equal moieties on the above said two brothers and since both of them had expired, their respective 50% shares further devolved in equal moieties on their respective children. Thus, the three children of the deceased P.Parthasarathy Mudaliar are entitled to 50% estate and the four children of the deceased P.Nagarathana Mudaliar are entitled to 50% share of the estate and thus, the second defendant is entitled to 1/6 share individually and 2/3rd share jointly along with her wards P.Sasikala her mentally unsound sister. After the death of Meenakshi Sundarammal on 12.09.1989, the second defendant has paid the Government dues in respect of the properties and she had also entered into joint

development of the building bearing No.265, Kilpauk Garden Road, Kilpauk, Madras with one Kothirathnam in the year 1991 itself. She had entered into an agreement of sale on 03.04.1992 in respect of the building and land along with other share holders / legal heirs with Doshi Housing Ltd., Century Plaza, Mount Road, Madras and completed the sale in the year, 1995. She had applied for a guardianship for her mentally unsound sister in O.P.No.440 of 1992 and she had been appointed as personal and property guardian along with her brother in O.P.No.440 of 1992 and in O.P.No.347 of 1992 by order dated 19.01.1994. She had also filed a partition suit for herself and on behalf of her mentally unsound sister as court guardian vide C.S.No.688 of 1994 which was subsequently transferred to the City Civil Court, Chennai. She had also taken permission from the XI Assistant City Civil Court, Chennai along with other shareholders/legal heirs and sold the building bearing No.46, Wallajah Road, Chepauk, Chennai-6 to one Kamarudeen for outright sale to see that each shareholder/legal heir get Rs.11 lakhs each and the sale took place in the year, 1999. She had applied for permission to sell the share of Sasikala in respect of the the building No.46, Wallajah Road, Chepauk, Chennai-5 and received Rs.14 lakhs and deposited the same jointly along with other guardian in Canara Bank, Anna Nagar, Madras-40 and

subsequently, in Rural Electrification Corporation, New Delhi as per the instructions of the High Court, Madras in the year February, 2002. She had also obtained a Judgment and decree in O.S.No.2180 of 1996 on the file of XVII Asst. City Civil Court, Madras, dated 01.04.2005. Even assuming that a Will had been executed by Meenakshi Sundarammal, it has no validity in the eyes of Law since she did not have any right to bequeath the said properties under the Will. The petitioners have suppressed the material facts and, though they were aware of the various transactions done, surrounding the estate, had come forward with the false case seeking letters of administration and hence, the suit is liable to be dismissed.

8. The averments contained in the written statement filed by the defendants 4 to 10 are briefly stated as follows:

The suit filed by the petitioners/plaintiffs is neither maintainable in law nor on facts. The suit is highly belated and barred by Law. No explanation nor justification is forthcoming on the part of the petitioners/plaintiffs for the inordinate delay in filling the present testamentary suit. Meenakshi Sundarammal had no right in the property being the subject matter of the suit to testamentarily dispose

of the same or any portion of the same. The properties described in Schedule A and B originally belonged to Thiruvengada Mudaliar, who had three sons and the properties were divided by partition into three shares under a registered partition deed dated 17.05.1944 and since P.Jayaram Mudaliar died in the year 1943 itself, his widow Meenakshi Sundarammal was allotted only a limited estate under the partition deed and after her death, her limited estate reverted back to the reversioners, the defendants herein. The plaintiffs herein are not even legal heirs of P.Jayaram Mudaliar and they have no locus standi for grant of letters of administration. Meenakshi Sundarammal could not have executed the alleged Will dated 08.09.1960 and one of her brother Ekambaram died in the year 1981 itself long prior to the death of Meenakshi Sundarammal. In the absence of any codicil or execution of a fresh Will raises a strong suspicion as regards the genuineness of the Will in question. The reversioners have taken several steps after taking charge of the properties belonging to the estate of P.Jayaraman and the failure on the part of the petitioners/plaintiffs to protest against the same, till date, expose the falsity and the forgery nature of the alleged Will. The alleged Will is a created document and never executed by law by late Mennakshi Sundarammal. The Will does not satisfy the requirements under the Law. Even in the newspaper

publication, nothing has been disclosed about the testamentary disposition of Meenakshi Sundarammal or any reference was made about her deceased husband P.Jayaram or about the alleged Will of Meenakshi Sundarammal and only after the defendants question the right of the petitioners/plaintiffs, the present lis has come to be preferred. There is no reference about the suit in the alleged Will which had been laid by Meenakshi Sundarammal for seeking the title deeds relating to the properties and this would also expose the falsity of the case of the petitioners/plaintiffs. There is an extraordinary delay in filing the present case and this factor also throws a strong suspicion in the genuineness of the Will in question and hence, the suit is liable to be dismissed.

9. On the basis of the above pleadings, the following issues are framed for consideration:

" 1. Is the alleged Will dated 8th September, 1960 of Smt.Meenakshi Sundarammal alias Mrs.P.M.Jayaram (Deceased) true and genuine?

2. Did Smt.Meenakshi Sundarammal alias Mrs.P.M.Jayaram has any bequeathable interest in the property

alleged to have been bequeathed in the Will, more fully described in schedule A and B to the petition for grant of letters of Administration?

3. Is the petition for grant of letters of Administration vitiated by laches and delay of 44 years?

4. To what reliefs, the parties are entitled ?

10. In support of the petitioners' case, PWs1 to 3 were examined and Exs.P1 to P41 were marked. On the side of the defendants' DW1 has been examined and Exs.D1 to D30 were marked.

11. Issue Nos.1 and 3

The petitioners/plaintiffs preferred the Original Petition No.684/2003 under sections 232, 255 and 276 of the Indian Succession Act, 39 of 1925 for grant of Letters of Administration as regards the Last Will and testament dated 08.09.1960 of the deceased Meenakshi Sundarammal @ Mrs.P.M.Jayaram. As against the above said Original Petition, a caveat being filed on 07.02.2004 by P.Madhan Mohan / the caveator with the supporting affidavit, the above said

Original Petition was ordered to be converted as Testamentary Original Suit and accordingly, T.O.S.No.08/2004 has come to be registered. Thereafter, the other defendants have been impleaded one way or the other.

12. The suit pertains to the Will and Testament of the deceased Meenakshi Sundarammal @ Mrs.P.M.Jayaram said to have been executed by her on 08.09.1960 and the said Will has come to be marked as Ex.P1. According to the plaintiffs, the Will marked as Ex.P1 had been executed by the testatrix in the presence of two witnesses, namely, P.S.Arunachala Mudaliar and A.C.Manicka Mudaliar. Further, according to the plaintiffs, under the aforesaid Will, the testatrix had appointed her father A.R.Somasundara Mudaliar and their family friend and retired subordinate judge K.Narayanasamy Mudaliar as executors.

13. As per the case of the plaintiffs, the above mentioned two executors are dead. Even, as per the case of the plaintiffs, the above mentioned two attestors to the Will are also no more. In such view of the matter, according to the plaintiffs, they have been necessitated to establish the proof of Ex.P1 Will as adumbrated under Section 69 of the Indian Evidence Act.

14. The contesting defendants have impugned the genuineness and validity of the Will marked as Ex.P1. According to them, Ex.P1 Will has been fabricated and created by the plaintiffs for the purpose of this case in order to grab the properties belonging to the testatrix. According to the contesting defendants, on the death of the testatrix, the plaintiffs would not be legally entitled to obtain the properties of the testatrix and therefore, according to them, in order to usurp the properties of the testatrix, the Will Ex.P1 has come to be concocted and fabricated by the plaintiffs. In such view of the defence put forth by the defendants, it could be seen that the plaintiffs have to establish at the foremost that the Will marked as Ex.P1 had been really executed by the testatrix in the manner known to Law. Inasmuch as according to the plaintiffs, the attestors to the document Ex.P1 are not alive, it is found that the plaintiffs have to establish the genuineness and authenticity of Ex.P1 Will as per Section 69 of the Indian Evidence Act.

15. Section 69 of the Indian Evidence Act, reads as follows:

"69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document

purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. "

16. Therefore, it could be seen that in case, the attesting witnesses are not available, the Will in question has to be proved by showing that the attestation of one attesting witness, at least, is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. As regards the proof of Ex.P1 Will, on the above said aspects, the plaintiffs have relied upon the evidence of PWs 2 and 3.

17. Section 47 of the Indian Evidence Act reads as follows.

"47. Opinion as to handwriting, when relevant.- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is

supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

18. A perusal of the above provision would go to show that the opinion of any person acquainted with the hand writing of the person by whom any document was written or signed is a relevant fact. As to the nature of evidence of such person, it is found that a person is said to be acquainted with the handwriting of another person, when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the

ordinary course of business, documents purporting to be written by that person have been habitually submitted to him. This is, what is, contemplated as per the explanation appended to Section 47 of the Indian Evidence Act.

19. Therefore, we have to assess the evidence of PWs 2 and 3 and see their veracity, based upon the provision of law enunciated under sections 69 and 47 of the Indian Evidence Act.

20. In this matter, the first plaintiff A.S.Rathnasabapathy has been examined as PW1 to substantiate the case of the plaintiffs. As regards the attestors to the Will Ex.P1 is concerned, PW1 during the course of cross examination has testified that A.C.Manickam Mudaliar, who is shown as a witness in Ex.P1 died on 15.03.1967 and P.S.Annamalai Mudaliar, the name of the other witness shown in Ex.P1 is also dead and they had made enquiries and are unable to get the details and further, he has also deposed that he does not know P.S.Annamalai Mudaliar and A.C.Manickam Mudaliar and not able to recollect anything about them. During further cross examination, PW1 has also deposed that they had obtained the death certificates of the two attesting witnesses to the Will Ex.P1 from the Internet and the

same had been filed as additional documents and enquired at the address of the two attesting witnesses furnished in the Will about the whereabouts of their sons and daughters and the said building is not to be found now and he had not seen the two attesting witnesses signing in the Will Ex.P1 and cannot say whether he can prove those signatures as theirs and does not personally know whether the two signatures found in the Will Ex.P1 are of the attesting witnesses of the Will Ex.P1. Therefore, a reading of evidence of PW1 in toto, would go to show that he is completely unaware of the persons, who are said to have attested the Will Ex.P1. He is also not sure whether the said persons actually attested the Will Ex.P1 and whether their signatures are actually found in Ex.P1 Will. That apart, it is also found that he is not aware of the family details or anything about the attestors and in such view of the matter, as rightly contended by the defendants' counsel, it does not stand to reason as to on what basis the plaintiffs have chosen to examine PWs 2 and 3 to establish the genuineness and veracity of Ex.P1 Will, as contemplated under Law.

21. As far as PW3 N.Vaitianadin is concerned, he has been examined to show that the signature of P.S.Annamalai Mudaliar found in Ex.P1 Will. As to how the plaintiffs had identified PW3 to be

acquainted with the signature of P.S.Annamalai Mudaliar, there is no clear cut evidence on the side of the plaintiffs. As regards the same, PW1 has not deposed anything. However, PW3 during the cross of his chief examination i.e. in the proof affidavit would claim that he visited the Kabaleeswarar Temple, Mylapore, on 25.11.2014, unexpectedly, he met the first plaintiff A.S.Rathinasabapathy and while having a talk with him, he had asked him about P.S.Annamalai Mudaliar and his relationship with him and that, according to PW3, he informed P.W.1 that he knew the deceased P.S.Annamalai Mudaliar and that he had acquaintance with P.S.Annamalai Mudaliar during the year 1963 and 1969 and that, he could identify his signature. Accordingly, as per the evidence of PW3, at the request of PW1, he had chosen to give evidence in this matter and thus, PW3 would claim that the signature of P.S.Annamalai Mudaliar is found in the Will Ex.P1. Therefore, it could be seen that as per the evidence of PW3, the plaintiffs had accidentally come to know that PW3 had knowledge about the signature of P.S.Annamalai Mudaliar, when PW1 met him for the first time on 25.11.2014 at Kabaleeshwarar temple, Mylapore. However, PW3 has not deposed during the course of chief examination as to how he had become acquainted with the signature of P.S.Annamalai Mudaliar. During the course of chief examination, he would only state

that the deceased P.S.Annamalai Mudaliar was the close friend of his father and his uncle Kanthaiya Mudaliar and that, he used to write letters to them regarding his visit to Thirunallar Lord Saneeswara Bagavan temple and in such circumstances, he had seen his signature in the said letters. Therefore, even as per the evidence of PW3, during the course of chief examination, the letters alleged to have been sent by Annamalai Mudaliar had not been addressed to him directly. According to PW3, the said letters had been addressed only to his father and his uncle by name Kanthaiya Mudaliar. During the course of cross examination, PW3 has categorically admitted that P.S.Annamalai Mudaliar had not written any letters to him, however, he had written letters to his father and that, such letters were written about 40 years back and similarly, he would claim that letters have been written by him to his uncle Kanthaiya Mudaliar, which also came into existence 40 years back. Therefore, it could be seen that PW3 would very casually and loosely claim that P.S.Annamalai Mudaliar had written letters to his father and his uncle but such letters are about 40 years back and in such view of his evidence, as rightly contented by the defendants' counsel, it is highly preposterous and unacceptable to accept the claim of PW3 that he is acquainted with the signature of P.S.Annamalai Mudaliar based on the letters said to have been addressed to his father

and his uncle about 40 years back. When such letters had not been addressed to PW3 in connection with any incident, it could be seen that the claim of PW3 that he had also seen the said letters as such cannot be readily accepted. According to PW3, he had got acquainted with P.S.Annamalai Mudaliar, when he used to visit Saniswara Bagawan Temple, Thirunallar for darshan and further, P.S.Annamalai Mudaliar became acquainted with his father and he had visited his house also. But, he would state that they had not collected his address and he does not know the residential address of P.S.Annamalai Mudaliar. Further, he would also admit that many persons used to accompany P.S.Annamalai Mudaliar, when he visited Thirunallar temple, but he would state that he does not know the name of such persons, who had accompanied P.S.Annamalai Mudaliar. Further, he has also admitted that he does not know the family details of P.S.Annamalai Mudaliar. Further, according to PW3, he would remember the details of only important persons, particularly, who ask for his assistance. When even according to PW3, P.S.Annamalai Mudaliar was acquainted only with his father and had not written letters to him directly and when the alleged letters said to have been written by P.S.Annamalai Mudaliar to his father and his uncle date 40 years ago and when there is no chance of PW3 coming into contact with such letters, the claim of PW3

that he is acquainted with the signature of P.S.Annamalai Mudaliar as such cannot be readily accepted in any manner. Further, during the course of cross examination by the defendants D4 to 10, PW3 has also admitted that he had not received any letter directly from P.S.Annamalai Mudaliar and does not have any letters signed by P.S.Annamalai Mudaliar and does not have any specimen signature of P.S.Annamalai Mudaliar with him. Such being the position, when according to PW3, he is acquainted with the signature of P.S.Annamalai Mudaliar on the basis of the letters said to have been written by him to his father and his uncle about 40 years back, it is highly improbable that PW3 would be in the remembrance of the signature of P.S.Annamalai Mudaliar contained in such letters and the position being above, as rightly contended by the defendants' counsel, the evidence of PW3 is not satisfying the requirements of the person acquainted with the signature of another person as contemplated under Section 47 of the Indian Evidence Act. It could be seen that his evidence would be of no use to sustain the plaintiffs' case in any manner. Therefore, as rightly put forth by the defendants' counsel, the evidence of PW3 cannot be accepted to hold that he is acquainted with the signature of P.S.Annamalai Mudaliar and that, the signature of P.S.Annamalai Mudaliar is found in Ex.P1 Will.

22. As regards the evidence of PW2 M.Ranganathan, he claims to be acquainted with the signature of the deceased Meenakshisundarammal @ Mrs.P.M.Jayaram and his affidavit has been also filed in this case and marked as Ex.P34. A perusal of Ex.P34 would disclose that PW2 has averred therein that he knew the signature of Meenakshisundarammal @ Mrs.P.M.Jayaram. However, in the said affidavit, it has not been disclosed as to under what situation, he had become acquainted with the signature of Meenakshisundarammal @ Mrs.P.M.Jayaram. Therefore, the reasons, with reference to the same, are completely absent in Ex.P34.

23. Be that as it may, during the course of evidence, it has to be seen whether PW3 has established that he is acquainted with the signature of Meenakshi sundarammal @ Mrs.P.M.Jayaram as mandated under law. According to PW3, Meenakshi sundarammal @ Mrs.P.M.Jayaram used to consult and discuss about her property issues with him and also get advice from him to give reply for the letters received from various authorities and in such circumstances, he had seen her signature and thus, he can identify her signature. Whether such claim made during the course of chief examination by P.W.2 could be accepted has to be seen. During the course of chief

examination, as seen from the evidence recorded, he has not been shown the original Will Ex.P1 to identify whether the signature of Meenakshi Sundrammal @ Mrs.P.M.Jayaram is found therein. What had been shown to him is only a certified copy of the Will and on seeing the certified copy, PW3 had deposed that it contains the signature of Meenakshi sundrammal @ Mrs.P.M.Jayaram.

24. During the course of cross examination, PW2 has admitted that he is closely acquainted with the family of PW1, particularly, with PW1's father, namely, A.S.Sundararaman @ Mylai Guruji. Therefore, it could be seen that PW2 has strong association with the family of the plaintiffs. During the course of cross examination, PW2 has admitted that Meenakshi Sundrammal has not written any letter to him and that, she had not asked him to attest any of her documents and also admitted that he does not know whether her father alone writes the documents for the family and when questioned about her husband Meenakshi Sundrammal, he would state that he does not remember but he would claim that he had seen her signing as Mrs. so and so, he does not remember her husband's name and also admitted that Meenakshi sundrammal is the sister of Mylai Guruji i.e. the father of the first plaintiff. According to him, he had seen Ex.P1 for the first

time in the house of the plaintiffs' counsel Nandagopal in 2005 and when questioned whether Meenakshi sundrammal knows to read and write in English and Tamil, he deposed that she is fluent in Tamil speaking but not seen her writing in Tamil and she is not used to converse in English, but she used some English words in her conversation and he does not know whether she knows to read and write English. Therefore, from the evidence of PW2, it could be seen that admittedly, Meenakshi sundrammal had not written any letters to him, nor sought his assistance regarding the attestation of any documents executed by her. When such being the position, the claim of PW2 that he knew her signature as she had sought advice from him in connection with certain queries from the government authorities as such cannot be straightaway accepted. Therefore, as rightly put forth by the defendants' counsel, PW2 has not established that he is acquainted with the signature of Meenakshi Sundrammal as contemplated under Section 47 of the Indian Evidence Act and his evidence cannot be accepted to hold that Ex.P1 Will has been really executed by Meenakshi sundrammal.

25. Excluding the evidence of PWs 2 and 3, it could be seen that there is absolutely no evidence on the part of the plaintiffs' to hold that

Meenakshi sundrammal had executed Ex.P1 Will as claimed by them in the presence of the attestors as required under Law. In such view of the matter, it could be seen that when in the light of the position that Ex.P1 has been seriously impugned and also, in the light of the position that the attestors to the said Will are no more and when the endeavors of the plaintiffs to establish the genuineness of Ex.P1 Will through PWs2 and 3 are of no use as discussed above, their evidence being not acceptable and trust worthy and not also in accordance with the requirements of law, it could be seen that the plaintiffs have miserably failed to establish that Ex.P1 Will has been really executed by the deceased Meenakshi Sundarammal in the manner known to Law.

26. According to the plaintiffs' case, Ex.P1 Will was executed by Meenakshi sundarammal on 08.09.1960. On the basis of the above said Will, the plaintiffs have come forward with the original petition seeking letters of administration in the year 2003, nearly 44 years after the execution of the Will. The lis has been instituted based on the same for the grant of Letters of administration. Further, as per the case of the plaintiffs, Meenakshi sundrammal died on 12.09.1989, the certificate of her death being marked as Ex.P2. Therefore, it could be

seen that 29 years after the execution of Ex.P1 Will, she had died. Even after her death, the plaintiffs have not come forward immediately with the present case for the grant of letters of administration. Nearly 14 years thereafter only, the Original Petition has come to be laid. As regards the delay with reference to the same, no acceptable reason is forth coming in the plaint of the plaintiffs. They would only state that the copy of the Will was obtained in November, 2001 and hence, the delay has occurred in filing the petition. However, it has not been explained in the plaint as to how the delay has occurred or why the copy had been obtained only in November, 2001. When even according to the plaintiffs, the Will had been executed by the deceased on 08.09.1960 and that, the deceased had died on 12.09.1989, absolutely, no reason whatsoever has been given in the plaint for the delay.

27. Even during the course of P.W.1 chief examination, nothing has been mentioned as to why the delay had been occurred in presenting the petition for the grant of letters of administration, particularly, after the death of the deceased Meenakshi Sundrammal @ Mrs.P.M.Jayaram. However, for the first time, during the course of cross examination, it is claimed by PW1 that after the death of his

father in the year 1999 and after his first year ceremony, while they were cleaning the cupboard in the house, they had a chance to see the receipts marked as Ex.P30 and based upon the same, on further enquiry, according to him, they approached the sub-registrar office and enquired and only thereafter, they had come to know about the existence of Ex.P1 Will. Therefore, according to the plaintiffs, based on Ex.P30 and further, enquiry conducted thereon, they had come to know about the existence of Ex.P1 said to have been executed by their paternal aunt Meenakshi sundarammal.

28. PW1, during the course of cross examination, has admitted that the testatrix Meenakshi sundrammal was residing along with them at 235 R.K.Mutt road, Mylapore and further, would also admit that the testatrix had been living in the same premises right through his childhood and from the evidence of PW1, it could be seen that the testatrix had two brothers and the family of the two brothers were all residing together under the same roof. Further, as seen from the evidence of PW1, it is found that even prior to the knowledge of the Will, they are aware that the testatrix was owning properties and that she used to receive rents in her bank accounts by way of cheque etc., and also directly receiving them. Therefore, when it is found that the

testatrix and her brothers family were all residing under the same roof and when the testatrix ownership of the properties is also known to the family members, as such, in the normal course of events, the testatrix having come to live with her brothers' family after the death of her husband, could be seen to have shared the knowledge of the execution of any Will, if she had executed such a Will, with her brothers' family. Therefore, the case of the plaintiffs that they were not aware of the Will in question i.e Ex.P1 till the late end of 2001, as such, cannot be accepted.

29. Even, as per the case of the plaintiffs, the Will in question Ex.P1 has come to be deposited by the testatrix with the Sub register in a sealed cover at her residence as contemplated under Section 42 of the Indian Registration Act 1908. Therefore, when such events had occurred, particularly, when the testatrix was living as one family with her brothers, to say that the deposit of the Will by the testatrix with the registrar at the residence without the knowledge of her brothers and brothers' family, as such, cannot be accepted in any manner. Equally, even assuming for the sake of arguments that the plaintiffs are not aware of the same, it could be seen that the brothers of the testatrix would be in the know of all the things about the alleged Will

said to have been executed by the testatrix. Therefore, the claim of the plaintiffs that they were not aware of the execution of the Will, till the end of 2001, as such, cannot be accepted in any manner.

30. It is not the case of the plaintiffs that the testatrix was inimically disposed of towards her brothers and other family members. Even according to the plaintiffs, she had bequeathed the properties only in favour of her brothers under the Will in question. In such view of the matter, when at the alleged time of the execution of Ex.P1 Will, the testatrix was living with her brothers under the same roof and when she had chosen to bequeath the right and interest of her properties in favour of her brothers and their children under the said Will, the case of the plaintiffs that they were not aware of the said Will, till the late end of the 2001, particularly, even after the death of the testatrix, as such, cannot be easily countenanced. This is found to be a strong suspicious circumstance surrounding the Will in question and when no plausible and acceptable reason is forth coming on the part of the plaintiffs to eradicate the same, it could be seen that the said circumstance will strongly negate the veracity of the Will in question.

31. The testatrix was alive nearly 29 years after the alleged execution of Ex.P1 Will. As adverted supra, she had nominated two executors under the so called Will. Admittedly, the two executors had pre-deceased her. Further, she had also bequeathed her properties under the Will to her brothers and thereafter, to their descendants. One of her brother Ekambaram, admittedly, had pre-deceased her. Therefore, as rightly put forth by the defendants' counsel, if really, the Will in question Ex.P1, had come to be executed by the testatrix, she having come to know that the executors' named in the Will had also pre-deceased her and one of the brothers had pre- deceased her, in the normal course of affairs, one would have expected her to re-write the Will in question by nominating other suitable persons as executors and also nominating suitable beneficiaries under the Will. However, the case of the plaintiffs that despite the aforesaid developments, the testatrix had not chosen to take care to re-write the Will in question, as such also, cannot be accepted. Considering the normal human conduct, the above circumstance also is found to be a suspicious one surrounding the Will and when no acceptable reason is forth coming with reference to the same, this factor also would go against the genuineness of the Will in question.

32. As seen above, the defendants have seriously impugned the genuineness of Ex.P1 Will. According to them, the said document is a fabricated one by the plaintiffs for the purpose of this case. In such view of the matter, it is for the plaintiffs to establish the veracity of Ex.P1. However, the plaintiffs endeavour to establish the same through PWs2 and 3 as discussed above are not acceptable and inspiring. Even from the evidence of PW1 itself, it could be seen that the Will in question would not be a genuine document. In this connection, PW1 during the course of cross examination has categorically admitted that his paternal Aunt has not carried out any philanthropic or religious activities, but under the Will in question, the testatrix had bequeathed one item of her properties cited in "B" schedule for the purpose of performing the Morning Utsavam on the day of Vaikunda akadesi in parthasarathy temple at Triplicane and that after her life time, her brothers shall be the trustee of the same and after the life time of her brothers, the eldest person in the family shall be the trustee and performing the service above mentioned every year. When according to PW1, the testatrix had not carried out any Philanthropic or religious activities, the plaintiffs case that she had earmarked one property for religious activities by creating a trust, as such also, is found to be a suspicious circumstance, not cleared by the

plaintiffs, as to whether at all such a Will would have been executed by the testatrix.

33. The case of the plaintiffs is that the testatrix used to sign as Meenakshi Sundaram Ammal @ Mrs.P.M.Jayaram. The same has been challenged by the defendants. When the documents marked as Exs.P9, P10 and P14 are admitted to be executed by P.Meenakshi sundarammal, in those documents, she has not signed as Mrs.P.M.Jayaram. When PW1 was confronted with reference to the same, he would state that the signature of the testatrix is found in Ex.P9 as well as in Exs.P10 and P14 and in those documents, there is a space between the letters Meenakshi and sundaram and Sundaram and Ammal and in those documents, there is no mention of the alias name of the testatrix namely Mrs.P.M.Jayaram. Similarly, he would also admit that in the documents marked as Exs.D6 to D9, there is no mention about the alias name of the testatrix as Mrs.P.M.Jayaram. However, some documents stated to have been executed by the deceased Meenakshi Sundarammal @ Mrs.P.M.Jayaram have come to be marked as Exs.P15 to P28 and when confronted with those documents PW1 has admitted that in Ex.P15 there is a difference in the age of the signature of Mrs.P.M.Jayaram and with that of the

contents found in the body of the document and has also admitted that Exs.P15 to 28 documents are found to be on a very old and faded paper with faded letters, however, the signature of Mrs.P.M.Jayaram is found to be bright and in blue colour. No doubt, he has denied the suggestion that Exs.P15 to P28 had been manipulated for the purpose of this case, but, on a perusal of the above said documents, as rightly put forth by the defendants' counsel, it is found that the signature found therein as Mrs.P.M.Jayaram, appeared to be very fresh, bright as and when compared with the documents as such. Further, PW1, during the course of cross examination, has also admitted that it is correct to state that in the first page of Ex.P1, there are corrections in the signature "MeenakshiSundaram" and when questioned whether in pages 2 and 3 the letter "K" in the word Meenakshi Sundaram is over written, he would state that the testatrix has signed in that way and has also admitted that in page 4, there is overwriting in the name of Meenakshi and has also admitted that the Will is in two parts, one is in Tamil and the other is in English and that the schedule of property is in English and further, according to him, there is no scribe or a typist mentioned in Ex.P1 and also admitted that the quality of the paper used for the portion in Tamil and that for in English are different and also admitted that it is correct to state that in page 27 of Ex.P1 there

are overwriting in the signature of Meenakshi Sundaram Ammal and in Ex.P1, there are corrections and insertion with an ink pen and that, the interlineations and corrections and insertions had not been authenticated.

34. Therefore, from the above evidence of PW1, when it is found that there are corrections and overwriting in the signature of Meenakshi Sundaram Ammal in the Will in question and when it is also found that the quality of the papers used for writing the Will are found to be very old compared with the signature of the testatrix found therein being fresh and bright and when there are various corrections and interlineations and insertions found in the Will and when the same had also not been duly authenticated and when it is not clearly made out that the testatrix was the author of the whole Will as such and on the other hand, when it is found that the Will in question is found to be in two parts, one written in Tamil and the other written in English, when it has not been established that the testatrix was well acquainted with English and when it has not been explained or established as to who had scribed the alleged Will, the above factors by themselves being intrinsic in nature also throw a great suspicion as regards the genuineness and the veracity of Ex.P1 and when the plaintiffs have

failed to dispel the cloud over the same, the above said factors also would disentitle the plaintiffs from claiming the reliefs sought for.

35. Further, as seen from the evidence adduced in this matter, it is found that the Will, in question, had come to light even prior to 2001, as seen from the contents found in Ex.P1. It is found that the sealed cover containing the Will had been opened in the presence of certain persons on 18.03.1992 and thereafter, the same has been copied in the book maintained at the registrar office, as seen from the contents found in page No. 25 of Ex.P21. When with reference to the same, PW1 was confronted, he would state that prior to the meeting with Sub registrar, he found that from the endorsement that somebody had seen the document, but, he does not know, who had approached the Sub registrar earlier in point of time with regard to Ex.P1 and that after receipt of the copy of the Will Ex.P1 from the Sub registrar, he did not make any enquiries as to who were the persons who had earlier approached the Sub registrar with regard to the Will and he does not know the persons A.V.Saravanan, B.Sundarrajan, R.Nandagopal appearing in the Will in the last page and does not know on what basis the above three persons had approached the Sub registrar and made those endorsements in the last page of Ex.P1 and

does not know even now as to who are they and whether they are alive or not and does not know their address also and prior to filing of the original petition, they made enquiries with their relatives and none of them, knew about their identity and therefore, as seen from the above evidence of PW1 and also the contents found in Ex.P1, even during the year 1992 itself, the Will in question had been opened from the sealed cover and been exposed to other persons. However, feigning ignorance about the same P.W.1 would state that he is not aware of the persons, who are responsible for the same and despite enquiries with reference to the same, he is not in a position to identify them. Thus, as rightly put forth by the defendants' counsel, it is projected as a theory by the plaintiffs in order to overcome the delay aspect. If according to the plaintiffs, they were aware of the Will in question only during the late end of 2001, after seeing Ex.P30, their further case that even prior to the same, during the year 1992 itself, the Will had been opened in the presence of certain persons, whose identification is not known to them, as such, cannot be readily accepted. If according to the plaintiffs, they are the only beneficiaries under the Will, it does not stand to reason as to how the others who had no connection with the Will, would have approached the Sub registrar and seen the Will in question. Therefore, this aspect of the

matter also throws a strong suspicion in the truth of the document in question and the theory projected by the plaintiffs that the identification of the persons is not known to them as such cannot be readily accepted.

36. As regards the acceptance of the plaintiffs' case, the following decisions were relied upon by the plaintiff's counsel **2008 (2) CTC 850 (Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and others), 2014 LawSuit (Del)416 (Rajindra Motwani Vs. State and others), 2015 LawSuit (Cal)411 (Arvind Garach Vs. Pragna Garach and ors), AIR 1993 PATNA 129 (Haradhan Mahatha and others Vs. Dukhu Mahatha), 2013 LawSuit (Del) 246 (Subhash Nayyar Vs. Registrar, University of Delhi & Ors), 1985 LawSuit (SC)8 (Satya Pal Gopal Das Vs. Panchubala Dasi), 1995 LawSuit (SC)321 (PPK Gopalan Nambiar Vs.PPk Balakrishnan Nambiar), 1995 LawSuit (SC) 621 (Rabindra Nath Mukherjee Vs. Panchanan Banerjee), 2004 LawSuit(Mad)1498 (Janaki Devi Vs. R.Vasanthi), 2005 LawSuit(SC)1313 (Pantakota Satyanarayana Vs. Pentakota Seetharatnam), 2007 LawSuit (Mad)1965 (J Mathew (died) and ors Vs. Leela Joseph), 1981 LawSuit(SC)459 (Indu Bala Bose Vs.Manindra**

Chandra Bose), 2002 LawSuit (SC)22 (Madhukar D Shende Vs. Tarabai Aba Shedage), 2008-1-L.W.255 (Savithri & others Vs. Karthyayani Amma & others), 2010 LawSuit(Pat)1074 (Radhika Devi and Anr Vs. Ajay Kumar Sharma and Ors), 1993LawSuit(Mad)65 (M Shanmugha Udayar Vs.Sivanandam), 2006 (4) CTC 773(Sadhu Singh Vs. Gurdwara Sahib Narike and Others) and 2007 LawSuit(SC) 1165 (Basanti Devi Vs.Raviprakash Ramprasad Jaiswal). With reference to the defence projected by the defendants and their case, the following authorities were relied upon by the defendants' counsel reported in ***1959 SCR 1403 (Baru Ram (SHRI) Vs. Shrimati Prasanni and others), (1992) 2 SCC 507 (Guro (SMT) Vs. Atma Singh and others), (1977) 1 SCC 369 (Smt.Jaswant Kaur Vs. Smt. Amrit Kaur and others), 2001 (2) CTC 744 (S.Thirunavukkarasu Vs.B.Kandasuamy Reddy and 2 others) and 2007 (2) CTC 760 (P.Kotteeswaran Vs. A.Shanmugam and others).*** The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

37. In the light of the above discussions, I hold that the plaintiffs have failed to establish that the Will dated 08.09.1960 said to have been executed by Meenakshi Sundarammal @ Mrs.P.M.Jayaram (deceased) is true and genuine. I further hold that for the reasons detailed above, the suit laid by the plaintiffs for grant of letters of administration is vitiated by the laches and delay. Accordingly, issues 1 and 3 are answered against the plaintiffs.

38. Issue No.2

Defence has been raised that Sri Meenakshi Sundarammal @ Mrs.P.M.Jayaram had no bequeathable interest in the properties conveyed under Ex.P1 Will. However, countering the said contention, it is the case of the plaintiffs that the deceased had asserted her right over the properties covered under Ex.P1 Will under the partition deed marked as Ex.P9 and further, according to the plaintiffs, the limited estate conveyed to the deceased under Ex.P9 had blossomed into absolute right as per the provisions of Section 14 of the Hindu Succession Act, 1956. However, considering the above rival contention raised by the parties on the above issue, the same being question of title, this Court sitting in testamentary jurisdiction cannot go into the question of title. In such view of the matter, the issue No.2 is left unanswered.

39. Issue No.4.

Testamentary Original Suit is dismissed with costs.

15.06.2017

Index: Yes/no
Internet: Yes/no
sms

T.RAVINDRAN.J.

sms/sli

Pre-delivery Judgment made in

T.O.S.No.8 of 2004

in

(O.P.No.684 of 2003)

15.06.2017