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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

T.O.S.No.27 of 2004

in

(O.P.No.433 of 1997)

Padmaja Ashok

.. Plaintiff

Vs.

Pamela Emmadi

.. Defendant

Original Petition No 433 of 1997 was filed under Sections 232 and 276 of Indian Succession Act, XXXIX of 1925 for the grant of letters of Administration. Against this petition a Caveat was filed on 19.7.2004 by the Caveator. As per order of this Court dated 03.9.2004 in O.P.No.433 of 1997, the Original Petition No.433 of 1997 was converted into Testamentary Original Suit No.27 of 2004

For Plaintiff : Mr.S.R.Rajagopal

For defendant : Mr. Ashok Menon

J U D G M E N T

The petition originally filed for the grant of Letters of Administration has been converted as suit in view of the caveat filed by the defendant herein.

2. The brief facts of the plaintiff's case are as follows:

(i) The plaintiff is the sister of the deceased Dr.E.Gopalakrishnan and the defendant is the wife of the said deceased. The deceased Gopalakrishnan, died on 01.2.1991, leaving the last Will and Testament dated 25.3.1990. At the time of his death, he left the property of half share in Door No.1, Sir Ramasamy Mudaliar Road, Vepery, Madras – 600 007.

(ii) The amount of assets which is likely to come into the plaintiffs' hands does not exceed in the aggregate sum of Rs.2,00,000/- and the net amount of the said assets is Rs.1,99,000/-. The plaintiff undertakes to duly administer the

property and credits of the deceased in any way concerned in the Will by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibits the same to the Court within six months from the date of grant of Letters of Administration with the Will annexed to the plaintiff and also to tender to this court a true account of the said property and credits within one year from the said date.

(iii) The plaintiff also submits no application has been made to any other District Court or delegate or to any other High Court for probate of any Will of the said deceased or Letters of Administration with or without the Will annexed to his property and credits. Since the plaintiff do not know that the Will has to be proved before the Court, there was a delay in filing the suit Thus, prayed for grant of Letters of Administration.

3. The brief facts of the case of the defendant is as follows:

(i) According to the defendant, her husband has never

executed the Will and the same had been created by the plaintiff. It is stated by the defendant that herself and testator studied together and became good friends and the same developed into affection and thereafter it blossomed into love. They married on 02.2.1982. It is further stated that herself and her husband had gone to Libiya in the year 1979 and at that time, her husband left some signed blank papers with his father to look after his affairs in India, and the same has been utilised for preparing the Will. According to the defendant, herself and her husband worked together in Libya and Chidambaram and were living together even at the time of the execution of the alleged Will. It is stated that there is no difference of opinion between them till the death of the testator and as such, there is no necessity for him to execute a Will by excluding her.

(ii) It is contended before filing the present suit, the plaintiff filed a suit for Permanent injunction being O.S.No.1381 of 1995, wherein she had sated that she came to know of the Will only on 07.1.1995 when she was searching the iron safe in their house. The very fact that the Will has been created by the

plaintiff is obvious from a reading of the above suit. The defendant reiterates that the evidence available before this Court would clearly indicate that the plaintiff had created the Will hoping that an interest could be created for herself and her two daughters in the suit property on the strength of the created Will. Thus, the defendant prayed for dismissal of the suit.

4. On the basis of the above pleadings, the following issues are framed: -

1. Whether the Will said to have been executed on 25.03.1990 is true, valid and duly executed?

2. To what relief the petitioner/plaintiff is entitled to?

5. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.D1 to D18 were marked. The details of the documents are here under:

Exhibits produced on the side of the plaintiffs:

<i>S. No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	P-1		Affidavit of attesting witness
2.	P-2	25.3.1990	Original Will
3	P3	11.3.1980	Letters
4	P4	03.01.1986	Letter
5	P5	30.01.1986	Letter
6	P6 series		Photographs
7	P7	-	Death Certificate of Dr.Gopalakrishnan
8	P8	24.03.2010	Certified copy of document 621 of 2010
9	P9	15.06.2010	Typed set

Exhibits produced on the side of the defendants:

<i>S. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1	D-1	28.3.1955	Settlement Deed
2	D-2	20.3.1967	Settlement Deed
3	D-3	13.3.1991	Legal heir certificate
4	D-4	03.11.1992	Affidavit of Damodaran
5	D-5	08.03.1995	Legal Heir Certificate
6.	D-6	-	Written statement in O.S.NO.1381 of 1995
7.	D-7	12.03.2001	Judgment in O.S.No.nO.1381 of 1995
8.	D-8	12.3.2002	Decree in O.S.No.1381 of 1995
9.	D.9		Plaint in O.S.No.1927 of 1996
10.	D-10	22.9.1997	Written statement in O.S.No.1927 of 1996
11	D-11		Chief and cross examination of P.W.1 and D.W.1
12	D-12	21-12-1998	Written statement in O.S.No.1927 of 1996
13	D-13	04.8.2000	Judgment in OS.No.1927 of 1996
14	D-14	08.3.2012	Judgement in A.S.No.156 of 2001

<i>S. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
15	D-15		Birthday wishes card (original)
16	D-16	19.2.1982	Original Letter
17	D-17	04.8.2000	Decree in O.S.No.1927 of 1996
18	D-18	27.5.1994	Will executed by Damodaran

Witnesses examined on the side of the plaintiffs:

P.W.1 - P.Venkateshwaralu

P.W.2 – Padmaja Ashok

Witnesses examined on the side of the defendants

D.W.1 – Pamela Emmadi

D.W.2 - George Moses

5. The learned counsel appearing for the plaintiff submitted that the testator, who is none other than the brother of the plaintiff, executed a Will dated 25.3.1990 bequeathing his property to the plaintiff's two daughters. Learned counsel for the plaintiff further submitted that the documents filed on the side of the plaintiff would clearly show that the testator was always affectionate to the daughters of the plaintiff. The testator died on 01.02.1991. It is submitted by the learned counsel for the plaintiff that the plaintiff came to know about the execution of

the Will only on 07.01.1995 and immediately, thereafter, she filed the petition for grant of Letters of Administration. Though the defendant contested the suit, the signature of the testator has not been denied by her. It is the only contention of the defendant that the signature of her husband, which has been obtained in the blank papers for some other purpose, has been utilised for preparing the Will. Whereas the evidence of P.W.1, attesting witness, would clearly establish not only execution of the Will by the testator but also the attestation as required under law. P.W.1's evidence would also prove the testamentary capacity of the testator at the time of execution of the Will.

6. It is the contention of the learned counsel for the plaintiff that merely because there was no necessity arisen for the testator to execute the Will, itself cannot be a ground to raise suspicious circumstances against the Will. The evidence of D.W.1 in chief and cross examination contradict each other. Ex.D4, affidavit, said to have been executed by the father-in-law of the defendant, i.e. Plaintiff's father, is also doubtful. It is submitted by the learned counsel that in the affidavit filed by D.W.1, she

has stated that she was prevented from entering into father-in-law's house after demise of her husband. Therefore, the contention of the defendant that her father-in-law handed over Ex.D4 to the defendant is highly unbelievable and the same cannot be taken into consideration. Further, D.W.1's evidence clearly shows that Ex.D4 was given by her father-in-law for the purpose of mutation of records. If that being so, the defendant ought to have handed over the same to the revenue officials, as without handing over the same, the mutation cannot take place. Whereas she has filed the said original before the Court, which is highly improbable. Further, D.W.1's evidence also indicate that all the movables and cash was given to the defendant. Since the testator had no issues, he has given the movables to his wife and rightly disinherited her from the suit property. Merely because, the testator disinherited his wife itself will not be a ground to suspect the Will, which is otherwise proved in the manner known to law. Hence, the learned counsel appearing for the plaintiff prayed for Letters of Administration.

7. In support of his contention, the learned counsel

appearing for the plaintiff has placed reliance on the judgments of the Hon`ble Apex Court reported in (2002) 2 SCC 85 (**MADHUKAR D. SHENDE vs. TARABAI ABA SHEDAGE**); (1996) 8 SCC 624 (**SADASIVAM V. K.DORAISAMY**); (2007) 1 SCC 546 and 9(**GURDEV KAUR AND OTHERS V. KAKI AND OTHERS**).

8. Disputing the arguments advanced by the learned counsel appearing for plaintiff, the learned counsel appearing for the defendant submitted that the defendant's husband was only 49 years old at the time of execution of the alleged Will. The learned counsel for the defendant further submitted that the defendant and the testator studied together and their friendship developed into affection and thereafter blossomed into love. Both of them married on 03.2.1982 and they were happily leading their marital life, till the death of the testator. Both of them also worked together in Libya and Chidambaram and were living together even at the time of the execution of the alleged Will. There is no dispute whatsoever, between them till the death of the testator and as such, there was no reason for her husband

to exclude her from the immovable properties. That itself create a serious doubt about the alleged Will said to have been left by the defendant's husband.

9. It is the contention of the learned counsel for the defendant that there was no reason whatsoever, mentioned in the original petition with regard to the delay in filing of the said petition for grant of Letters of Administration. Whereas in the previous suit in O.S.No.1381 of 1985, which has been filed on the file of the City Civil Court, Chennai, the plaintiff has taken a stand that she found the Will only on 07.1.1995. In the pleadings of the previous suit filed by the plaintiff, the date of the Will has been left blank and the same was filled later in Ink. This fact clearly suggest the fact that the Will has been created at a later point of time to deprive the legal share of the defendant, who is the wife of the testator, namely, Dr.E.Gopalakrishan.

10. Learned counsel for the defendant vehemently contended that the testator, who was 49 years old, was hale and healthy at the relevant time and hence, there was no necessary

for him to execute the Will. That itself creates a serious doubt with regard to the execution of the Will. It is contended by the learned counsel that while the defendant's husband while leaving India to Libya, he used to leave blank signed papers with his father to attend his affairs in India, viz., paying tax and investment in bank account. Similarly, the defendant also used to leave blank signed papers with her father-in-law. It is submitted by the learned counsel that after their return from Libiya, only few of the blank signed papers were returned and remaining was retained by the father-in-law of the defendant and that, the same would have been utilised for preparing the alleged Will.

11. It is also the contention of the learned counsel for the defendant that the manner in which the so called Will was written would prove the fact that the same is not a genuine one. It is submitted that the testator and his brother had already executed settlement in respect of certain portion of the property, but without even mentioning the same, the Will has been written including the above property also, that itself shows that the Will

has been prepared at a later point of time. Merely because some witnesses have examined with regard to the execution and attestation, that itself will not be a ground to believe the Will. P.W.1, attesting witness, in his evidence, has stated that he informed about the execution of the Will to P.W.1, the plaintiff herein, on the date of the execution of the Will itself. Whereas it is the specific case of the plaintiff that she came to know about the execution of the Will only on 07.1.1995. The above contradictory evidence of P.W.1 and P.W.2 itself would create a serious doubt about the execution of the Will.

12. It is the submission of the learned counsel for the defendant that the signature found in Ex.D4, affidavit, given by the defendant's father-in-law, is not at all denied by the plaintiff, wherein the defendant's father-in-law has stated that the testator died intestate. Ex.D4 would clearly prove that the Will in question, was prepared by the plaintiff only to grab the suit property. It is the further contention of the learned counsel for the defendant that another suit has been filed by the plaintiff against the legal heirs of deceased brother, wherein also she has

set up a Will, which was also dismissed, as evident from Exs.D7 and D8. All these facts clearly show that the plaintiff, who is residing adjacent to the suit property, is somehow or other trying to grab the property of the defendant by taking advantage of the fact that she is a widow of the testator. Therefore, according to the learned counsel the alleged Will has not at all been established by the plaintiff.

13. Learned counsel for the defendant further contended that the beneficiaries in the Will, who are said to be the plaintiff's daughters, are minors at the relevant time and they became major long back but, for the reason best known to the plaintiff, they have not come on record and that, the plaintiff herself is conducting the case without impleading the actual beneficiaries. All these facts clearly show that the Will has not been proved in the manner known to law. Hence, the learned counsel for the defendant prayed for dismissal of the suit.

Issue Nos.1 and 2:

14. Originally, the OP was filed by the plaintiff herein for grant of Letters of Administration of the Will said to have been executed by the deceased Dr.E.Gopalakrishnan on 25.3.1990. Subsequently, it has been converted as a suit in view of the caveat filed by the defendant. It is the admitted fact that plaintiff herein is the sister of the said deceased Goplakrishnan and the defendant is his wife. It is well settled that initial burden always lies on the propounder to prove the execution, attestation as well as the testamentary capacity of the testator at the time of execution of the Will. Once the initial burden is discharged, burden shifts on the other side to prove that there is suspicious circumstances which goes to the root of the alleged Will. When the defendant is able to show the suspicious circumstances attached to the Will and that the Will is not proved in the manner known to law, then burden again shifts on the plaintiff to dispel the said suspicious circumstances.

15. In this case, the plaintiff, propounded the Will dated 25.3.1990 said to have been executed by her brother in favour of her two (2) daughters, who are minors at the relevant time. The

Will was exhibited as Ex.P2. To prove the Will, the plaintiff examined one Venkateshwaralu, P.W.1, one of the attesting witnesses. P.W.1 in the chief examination has stated that one Muralidharan, another attesting witness, was present at the time of signing the Will by testator Gopalakrishnan and the testator also seen the attesting witnesses attesting the document, Ex.P2. Though Ex.P1, affidavit of P.W.1 proves the Will as required under law, when the cross examination of P.W.1, is carefully perused, P.W.1, who is the relative of the plaintiff, has stated that the plaintiff's father's mother and her grandmother are sisters and he knows the plaintiff personally and he used to come to Chennai to see the plaintiff's father Damodharan and at that time the testator Gopalakrishnan told him that he was going to write a Will and that, he and Muralidharan should sign the Will as attesting witnesses. It is stated by P.W.1 in the cross examination that ten (10) days before execution of the Will, the deceased Gopalakrishnan requested him to attest the Will.

16. The evidence of P.W.1 further shows that at the time of execution of Will, the deceased Gopalakrishnan was 50 years

old and that, he was not suffering from any disease till his death. P.W.1, also stated in his evidence that he saw the Will Ex.P2 for the first time on 25.3.1990 and after the testator signed in the Will, he and Muralidharan attested the Will. It is the further evidence of P.W.1 that the testator Gopalakrishnan signed the Will in his house where he was residing with his wife, the defendant herein. P.W.1 deposed that at the time when the deceased Gopalakrishnan was signing the Will, the defendant was in home but the defendant did not see the testator or P.W.1 or other attesting witness signing the Will. Further, P.W.1 also admitted that on the same day when the Will was executed, i.e., on 25.3.1990, he informed the plaintiff that deceased Gopalakrishnan has bequeathed the suit property in her favour.

17. P.W.1 also deposed in his evidence that at the time of execution of the Will, i.e., on 25.3.1990 both Gopalakrishnan and the defendant were living together and they were also worked together in Annamalai University and they were residing in the house where the alleged Will said to have been executed

by the testator. His evidence also disclose the fact that the wife of the testator, i.e., the defendant herein, was very much present in the house, where the Will was said to have been executed, however, she did not notice the deceased Gopalakrishnan executing the Will and she had also not seen the attesting witnesses. This particular evidence of P.W.1 create a serious doubt about the alleged execution of the Will in his house itself. The evidence of P.W.1 that when the wife is very much available in the house, the husband, who was living together with the wife, the defendant herein, executing Will in the same house without showing any symptoms to his wife at the relevant time is highly improbable and unbelievable. Therefore, evidence of P.W.1 that though the defendant, being the wife of the testator, was very much present in the house, she did not notice either P.W.1 or attesting witnesses in the house at the relevant time is highly improbable and the same would clearly indicate that his evidence is nothing but concocted for the reasons best known to him.

18. Though P.W.1's evidence in the chief show as if the Will was executed, the cross examination of P.W.1 create serious

doubt about the so called execution in the house itself. This fact is further strengthened by the way in which the Will was written. When Ex.P2, Will, is carefully read, it is seen that the same is typed in the single page. It is admitted by both sides including the attesting witnesses that husband and wife, i.e. testator and the defendant was residing together and there was no dispute between them till the death of the testator. The oral and documentary evidence on record would also prove the fact that the testator and his wife are Doctors by profession and both of them were living together and worked together in Libiya and returned to India and thereafter worked together in Annamalai University at Chidambaram. It is also admitted by P.W.1 and P.W.2 that the testator was in a sound state of mind and not suffering from any disease at the relevant time and he met with an accident in the year 1990 while he was going to Egmore Railway Station, and succumbed to injuries. It is the admitted fact that the testator was aged about 49 to 50 years at the relevant time and he was not suffering from any disease and further there was no difference of opinion between the testator and his wife. That being the situation, the husband totally

disinheriting his own wife in entire immovable property, which was owned by him at the relevant time, is highly improbable and the same would create serious doubt about the execution of the Will. Unfair and unjust disposition towards the sister's daughters excluding his own wife would also create suspicious circumstances towards the Will.

19. The above suspicion is further strengthened by other circumstances available on record. In the Original Petition, nowhere it is pleaded by the plaintiff that she came to know about the Will only on 07.1.1995. In the Original Petition, she has pleaded that there is a delay in approaching the Court for grant of Letters of Administration, which is nothing wilful nor wanton. Except the above statement, she never whispered about the fact that when she came to know about the execution of the alleged Will. Whereas for the first time, in her chief examination, she has introduced the theory that after the death of her father, when herself and another brother E.Ramkrishnam, were searching the papers in iron safe, they found that the testator had left behind the Will dated 25.3.1990. Thus, it is stated by

the plaintiff that the execution of the Will by Dr.Gopalakrishnan is known to her only on 07.1.1995, when they are going through papers in the iron safe. This evidence of P.W.2 is highly inconsistent and in fact falsified by the evidence of P.W.1, so called attesting witnesses. P.W.1 in his evidence has stated that on the date of execution of the Will itself, he informed the same to the plaintiff. P.W.1's specific evidence is that on the same day when the Will was executed, he told the plaintiff about the bequeath made by her brother. Therefore, the evidence of P.W.2 that she had knowledge about the Will only in the year 1995 is also unbelievable and in fact is very doubtful. It is also one of the suspicious circumstances attached to the Will.

20. That apart, from the oral and documentary evidence, it is well established that the testator and his another brother, Ramakrishna, had executed a Settlement Deed in respect of an extent of 540 sq.ft in favour of Venkatakrishna, another brother of the tester with regard to the very same suit property as early as on 29.3.1955. If really, the testator, who is a Doctor by profession, had an intention to execute the Will in favour of the

plaintiff's daughters, in the Will, he would have mentioned the description of the property properly. But, the aforementioned extent of 540 sq. ft found in Ex.D2, Settlement Deed, was omitted to be mentioned in the Will. Whereas the Will proceeds as if the entire property has been bequeathed in favour of plaintiff's daughters, who are minors at the relevant time. This would also create suspicious circumstance about the execution of the Will.

21. Of course, signature of the testator is not denied by the defendant herein. But, it is the main contention of the defendant that whenever her husband was going abroad, he used to leave some signed blank papers with the custody of his father, Damodharan, to enable him to look after her husband's affairs and one such paper was used for preparing the Will by the plaintiff as she was residing adjacent to the suit property and she had all access to the suit property, where her father was very much living. In this regard, it is useful to refer the cross examination of P.W.2. When the specific question was put to P.W.1 with regard to the above specific allegation, the same was

not even denied by P.W.2 and in fact, she pleaded ignorance about the same. She has stated in her cross examination that she was not aware whether his brother E.Gopalakrishnan, when he left for Libya, had given some blank papers signed by him to his father to manage his affairs, pay tax, etc., It is not denied by her that after the death of the testator, her father Damodaran returned several blank papers to the defendant and also told that he would search for some more papers and return the same. When the specific evidence of D.W.1 that her husband used to leave the signed blank papers to her father-in-law for the purpose of filing tax and to look after his affairs, is not denied by P.W.2 in the cross examination, such evidence is nothing but deemed admission.

22. Further, P.W.2 in her evidence not denied the affidavit said to have been executed by her father on 03.11.1992, which is marked as EX.D4. In her evidence, she has stated that she did not know whether her father had sworn affidavit on 03.11.1992 stating that her brother E.Gopalakrishnan died intestate. She has also stated that she had seen the affidavit sworn by her father 6

years after 1995. Non denial of the above vital document coupled with the evidence of P.W.1 and P.W.2 clearly established the defendant's contention that her husband used to leave the signed blank papers with his father for the purpose of looking after his affairs in India.

23. It is to be noted that P.W.2 herself admitted in her evidence that her brother's marriage was a love marriage. The evidence of P.W.1 and P.W.2 clearly show that till the death of the testator both husband and wife, i.e. the testator and the defendant herein, were living together happily and there was no difference of opinion between them. That being the case, excluding the wife and bequeathing the property to sister's daughters is also doubtful. It is further to be noted that, as already discussed above, the plaintiff has not specifically denied the suggestion put by the defendant's counsel that defendant's husband used to leave signed blank papers with her father for paying tax etc., The above non denial coupled with the plaintiff's documents, more particularly, the letters said to have been written by the testator from Libiya to plaintiff's father and to the plaintiff, clearly indicates that such blank papers were left by him

for the purpose of paying tax etc.

24. In this regard, when Ex.P3, letter written in the year 1980 is carefully perused, it is seen that the testator had written letter enquiring about the plaintiff's daughters and plaintiff's father. Merely some letter has been written by the testator enquiring about the plaintiff's daughters, it cannot be concluded that he was always affectionate towards plaintiff's daughters alone. It is quite natural to write a letter by brother enquiring the sister's children. Further, the aforementioned letter would also clearly indicate that the testator requested the plaintiff and other family members to draw cash and also requested them to send Account number to enable him to send cash to them. Merely because in the year 1980, the said letter was written enquiring the well being of children of the plaintiff that cannot be taken advantage by the plaintiff to contend that the Will is a genuine one. Ex.P4 also clearly shows that besides enquiring the plaintiff's children, he has also requested the family members to renew the fixed Deposit stands in his name and he also requested the family members to contact one Suri, a Finance Broker, for collecting application forms for Fixed Deposit in a Public Limited

Companies and Bank. Ex P5 clearly indicate that he sent USD draft for encashing it and for giving credit to his account. These facts clearly indicate that the testator and his wife were in Libiya in the year 1986. This letter were addressed by the testator not only enquiring the family members or children of the plaintiff but also requested them to make arrangements with regard to the financial transaction, such as filing income tax returns, collecting forms, renewal of cash deposits and share forms etc., All these facts clearly probabilsed the defendant's contention that only for that purpose, the testator used to leave the blank signed papers with his father. Therefore, merely because signature found in Ex.P2 is not denied by the defendant that itself will not be a ground to believe the Will.

25. It is to be noted that the evidence of P.W.2 clearly indicate that from the year 1995, she has engaged four lawyers to contest the suit, and the matter has come to the argument stage only in the year 2017. She has successfully dragged on the proceedings under the guise of the testamentary suit. The testator has died in an accident at the age of 49 to 50 and, as

stated above, there was no difference of opinion between him and his wife, the defendant herein. Therefore, excluding the wife, who married the testator and led marital life without any problem, is also one of the strong suspicion attached to the Will. Ex.D4, affidavit, said to have been sworn by father of the testator, Damodharan, in the year 1992, which was attested by the Notary Public, wherein he has stated that his son died intestate leaving behind him and his daughter-in-law, i.e. the wife of the testator, as legal heirs to succeed to the estate of the deceased. The signature of the said Damodaran, the father of the plaintiff, found in the affidavit has not been denied by the plaintiff. Therefore, it is clearly established that the alleged Will dated 25.3.1990 cannot be true at all.

26. It is the contention of the learned counsel for the plaintiff that D.W.1, in her evidence, has stated that the aforementioned affidavit was given only for the purpose of mutation of records and if that being so, the same ought to have been produced before the Concerned Department, as without producing the same, mutation cannot be taken place. Whereas

the defendant has filed the original affidavit before this Court, which is highly improbable and the same creates a doubt against Ex.D4.

27. It is worthy to mention that appreciation of evidence can be based only on the admission and denial in the substantive piece of evidence of the respective parties. When P.W.2 was confronted with the aforementioned affidavit, she has not denied the signature of her father. What she tried to say before this Court is that she was not aware of the said affidavit. Therefore, when the specific document is not denied, which otherwise proved by the person, who produced such document, and the same was also tested before the Court, I am of the view that the argument advanced by the learned counsel for the plaintiff to that effect cannot be given much importance.

28. The plaintiff has already filed a suit in O.S.No.1381 of 1995 against the defendant from restraining her from alienating the suit property, which was dismissed, and the judgment and decree were exhibited as Exs.D7 and D8. It is

also seen that one Rajyasree and Navin Emmadi, another legal heirs of the plaintiff's another brother, filed a suit before the City Civil Court, Chennai against the plaintiff herein for declaration that they are the absolute owners of the property and other reliefs, which is exhibited under Ex.D9. The plaintiff herein contested the above suit, wherein she has taken the defence that her father Damodaran perfected title to the suit property and he has executed the Will bequeathing the suit property in favour of the plaintiff's daughter. The written statement filed by the plaintiff herein in the above suit is marked as Ex.D12, wherein the plaintiff has pleaded that her father during his life time executed the Will dated 27.5.1994 bequeathing the properties to her daughters. But the said contention of the plaintiff herein was negated by the City Civil Court and the suit was decreed in favour of original owners, which could be seen under Ex.D13. An appeal, being A.S.No.156 of 2001, filed by the plaintiff herein before this Court, was also dismissed, which could be seen under Ex.D14.

29. Though these documents are not germane for

consideration, the same clearly explicated the conduct of the plaintiff. The plaintiff, who is the sister of the testator as well as late Venkatakrishna Emmadi, wanted to establish title over the property, which were held by her brothers, not only in the instant suit but also in the other suits which were filed before the City Civil Court, as discussed above. In the previous suit, the plaintiff herein has pleaded existence of the Will as against another sister-in-law. All these facts would clearly establish only one inference, i.e., the plaintiff is in the habit of creating some Will.

30. In any event, as already discussed above, the manner in which the Will came to be executed by the testator, who is a Doctor by profession, itself creates suspicious circumstances. It is pertinent to point out, at the risk of repetition, that the testator's wife is also Doctor by profession and their marriage was love marriage and that they were living together at the relevant time without any difference of opinion or strained relationship between them, and since the testator has met with an accident in the year 1991, resulting in his death,

within few days, at the age of 49-50 years, there is no necessity for the testator to execute the alleged Will in the year 1990, that too, excluding the wife, the defendant herein.

31. A perusal of the entire oral and documentary evidence available on record would show that the testator was hale and healthy at the relevant time. There was no occasion whatsoever, arose for him to exclude his wife with whom he was living happily at the relevant time. Similarly, accommodating the Will in the single page would also create serious doubt about the execution of the same. Further, the evidence of P.W.1, attesting witness, does not disclose the fact that who prepared the Will and the same would create further suspicious circumstances attached to the Will. Since the testator is a highly educated man, he would not have written the Will in a single page. If really he had intention to execute the Will, he would have done the same in a legal manner as it was done by him, on an earlier occasion in settling some portion of the very same suit property. All these facts clearly show that the Will would not have been executed by the testator.

32. The contention of the learned counsel for the defendant that the plaintiff has prepared the Will at a later point of time is probalised. The plaintiff is not able to satisfy the legal requirements as expected by this Court. For the above reasons, this Court hold that the plaintiff has failed to dispel the various circumstances pointed out by this Court, as discussed above, to accept Ex.P2, Will, as a genuine one.

33. More so, it is to be noted that the beneficiaries in the Will are Daughters of the plaintiff herein. Though they were said to be minors at the time of filing the suit, the evidence of P.W.2 clearly indicates that her daughter Archana, is 31 years of old in the year 2013. Though plaintiff's daughters became major, they have not come on record to contest the suit for the reason best known to them. The plaintiff also not discharged herself from the so called guardianship. These facts cannot be ignored altogether.

34. In view of these foregoing reasons, this Court hold

that Ex.P2 was prepared at a later point of time, and the same is not a genuine one. Therefore, this Court is not inclined to grant Letters of Administration and the suit is liable to be dismissed with costs. Accordingly, these issues are answered.

35. Insofar as the judgment relied on by the learned counsel for the plaintiff in **MADHUKAR D. SHENDE vs. TARABAI ABA SHEDAGE** (*cited supra*) is concerned, absolutely, there is no dispute with regard to the proposition laid down in the said case. In the said Judgment, the Hon`ble Apex Court has 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. What was told by Baron Alderson to the jury in *R.v.Hodge* [(1838) 2 Lewis CC 227] may be apposite to some extent:*

“The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself,

to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

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.

9. It is well settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the

testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of "not proved" merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance. "

36. Similarly, in **SADASIVAM V. K.DORAISAMY** (cited *supra*), the Hon`ble Supreme Court has observed as follows:

".. .. 6. As regards the circumstances which have been characterised by Mr Sibal as suspicious, the one, namely the Will seeing the light of day only in 1985 though it was executed in 1979, is really suspicious, others, like it being unregistered, there being no witness of the locality and divesting of close relations, are not so, as, very often a Will is not registered and such persons are called to attest it in whom the testator has confidence, even if they be residing at some distance. Divesting of close relations being the purpose of execution of Will, this is normally not a suspicious circumstance. This apart, as submitted by Mr Lalit, good reason existed for bequeathing the property to the respondent — the same being his having been brought up by Karuppanna. As to making the Will public in

1985, the explanation is that relationship with Marappa became strained when he filed suit OS No. 187 of 1985, whereafter suit for probate of the Will was filed by the respondent — the same suit OS No. 274 of 1985. The aforesaid delay cannot, in these facts, raise any suspicion. So, the Will cannot be said to be surrounded (sic shrouded) with suspicious circumstances. "

37. Likewise, in **GURDEV KAUR AND OTHERS V. KAKI AND OTHERS** (cited supra), it has been held as follows:

" 21. When execution of the will is fully proved then in order to ascertain the wishes of the testator we have to look to the text of the will. The intention of the testator has to be discerned from the language used in the will. In view of such clear and unambiguous language used in this will perhaps, no other interpretation was possible. The trial court clearly arrived at a conclusion that the deceased Chanan Singh had executed

the will in favour of his wife, Bhagwan Kaur.

.. ..

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

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

78. *The learned Single Judge of the High Court has not even properly appreciated the context of the circumstances. The contents of the will have to be appreciated in the context of his circumstances, and not vis-à-vis the rules for intestate succession. It is only for this limited purpose that the court examines the nature of bequest. The court does not substitute its own opinion for what was the testator's will or intention as manifested from a reading of the written instrument. After all, a will is meant to be an expression of his desire and therefore, may result in disinheritance of some and grant to another. In the instant case, wife of the testator Bhagwan Kaur alone had lived with the deceased and only she had looked after him throughout his life. The other daughters were all happily married a long time ago and in their weddings the testator had spent huge amount of money. In his own words, he had spent more than what they would have got in their respective shares out of testator's property.*

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

Admittedly, there is no dispute with regard to the proposition laid down in all the above judgements. But in the case on hand, the defendant has clearly established the fact that the Will is not a genuine Will and the same has been prepared at a later point of time. Therefore, the above judgements are not applicable to the facts of the present case.

29. In the result, the suit is dismissed with costs.

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Index:Yes/no
Internet : Yes/No

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N.SATHISH KUMAR.J.

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Pre-delivery Judgment in
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