

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.35 OF 2011**

1. Jose Sebastiao Pereira (since deceased)
(amended as per order dated 16/12/2015)

(a) Mr. Charles Pereira (son)

(b) Ms. Diana Pereira (daughter)

(c) Mr. Jollyton Pereira (son)

All above are residing near
People's High School, Mala
Fontainhas, Panaji-Goa.

(d) Mrs. Tanya Pereira (daughter)

(e) Ms. Roldao Pereira (son-in-law)

Both resident of H. No.43, Near
Father Agnel Ashram, Dando Verna,
Salcete, Goa.

(f) Mr. Kenny Fernandes (son-in-law)
Resident of Flat No.103, Brivdavao
Building, Tonca- Caranzalem,
Panaji.

2. Mrs. Chaffie Pereira

3. Jessica Pereira
all of full age, residing at H.N.162,
near People's High School,
Mala, Panaji-Goa.

.... Appellants

V e r s u s

1) Ms. Sarojini Isaura Pereira,
widow of late Joazinho Pereira,
and daughter of Roberto Menezes,

residing at H. No. 869, Calapur,
S. Agostinho Waddo, Santa Cruz,
Ilhas Goa.

2) The Manager Dena Bank,
Panaji Branch, Panaji Goa (deleted).

3) The Senior Post Master,
Panaji, Goa. (deleted)

..... Respondents

Shri M. B. D' Costa, Senior Advocate with Advocate Ms. K. Betquecar for
the Appellants.

Smt. A. Agni, Senior Advocate with Advocate Ms. E. Esteibeiro for the
Respondents.

CORAM: C. V. BHADANG, J.
Reserved on: 11th July, 2018.
Pronounced on: 12 July, 2018.

O R D E R:

The challenge in this Second Appeal at the instance of the original plaintiffs is to the concurrent findings of the courts below, dismissing the suit filed by the appellants, while allowing the counter claim filed by the respondent no.1/defendant no.1.

2. For the sake of convenience, the parties are referred to in their original capacity as plaintiffs and defendants.

The plaintiff no. 2 is the wife of the plaintiff no.1. The plaintiff no.3 is their daughter. The plaintiff no.1 had a brother by name Joaozinho Pereira

who had passed away on 14/3/2003, as he was ailing from cancer. The defendant no.1 is the widow of Joaozinho Pereira. Shri Joaozinho Pereira and the defendant no.1 had no issues. According to the plaintiff during his life time, late Joaozinho had gifted the plaintiff out of love and affection the following amounts:

- a) An amount of Rs.70,000/- (Rupees Seventy thousand five hundred and twenty only) in fixed deposit Account No.SDR/16263 in Dena Bank, Panaji, Goa, maturing on 6/3/2005. The initial deposit was of Rs.42,000/- @ 10.50 % interest. The copy of the receipt is annexed as document "A".
- b) An amount of Rs.70,520/- (Rupees seventy thousand five hundred and twenty only) in fixed deposit Account No. SDR/16262 in Dena Bank, Panaji, Goa, maturing on 6/3/2005. The initial payment was Rs.42,000/- @ 10.50 % interest. The copy of the receipt is annexed as document "B".

3. The said gifts were accepted by the plaintiff no.1. Further according to the plaintiffs late Joaozinho Pereira was fond of his niece, the plaintiff no.3 and was treating her as his own daughter. During his life time, late Joaozinho Pereira had gifted the plaintiff no.3 certain amounts as set out in para 3 of the plaint. The gifts were accompanied by the relevant certificates which were received by the plaintiff no.1 on behalf of his minor daughter.

4. Late Joaozinho Pereira was ill from September/ October 2002 and was suffering from terminal sickness and during this time he used to stay with the defendant no.1, who used to look after him. Late Joaozinho Pereira was hospitalized for the first time in December 2002 in Tata Memorial Hospital in Mumbai and during this time was entirely under the control and influence of his wife who was also working as a midwife.

5. Somewhere on 20/2/2003 late Joaozinho called the plaintiff no.1 and told him that the defendant no.1 had forced him to make a Will in her favour, although he had appraised her that he wanted to bequeath his share to his niece Jessica. Further according to the plaintiffs the defendant no.1 had allegedly told the deceased Joaozinho that if he did not agree and did not make a Will in her favour she would not look after him and would leave him alone. In short, the case made out in the plaint was that the defendant no.1 coerced the deceased Joaozinho Pereira to execute the Will in her favour.

6. After the death of Joaozinho on 14/3/2003 somewhere in November 2003 defendant no.1 told the plaintiff no.1 that Joaozinho had left a Will bequeathing everything which he had in favour of defendant no.1 and asking the plaintiff no.1 to hand over the original National Saving Certificate to her. The defendant no.1 also showed the plaintiff the Will dated 27/2/2003. The

plaintiffs were not prepared to accept the said Will.

7. It appears that some time prior to the death of Joaozinho Pereira a vehicle belonging to him was purchased by his brother Rogerio Pereira and the defendant no.1 herself had informed the Road Transport Authorities about the loss of the alertness of Joaozinho.

8. Be that as it may, the plaintiff ultimately obtained a copy of the Will and filed the aforesaid suit for a declaration that the plaintiff no.1 is the owner of the amounts lying in Dena bank and the National Savings Certificates as set out in prayer clause (a) and (b) of the plaint. The plaintiff also sought a declaration that the Will dated 27/2/2003 is null and void and for a permanent injunction restraining the defendant no.1 from withdrawing any amount and/or from encashing the Fixed Deposits and the National Saving Certificates.

9. The defendant no.1 filed written statement and resisted the suit and raised a counter claim. It was denied that the subject Will was executed by Joaozinho Pereira out of coercion or that he was not a in a fit state of mind at the time when the Will was executed. By virtue of the counter claim, the defendant no.1 sought a declaration that she is entitled to the amount of

Rs.31,374/- collected by the plaintiff no.1 from the Goa Urban Cooperative bank, Panaji and for recovery of the said amount from the plaintiff no.1 along with interest.

10. On the basis of the rival pleadings the learned trial court raised the following issues: The issue no.3 was subsequently deleted on 21/3/2006.

- i. Whether the plaintiffs prove that the plaintiff no.1 is the owner of the amounts which stands deposited in Dena Bank of India under the fixed deposit accounts?
- ii) Whether the plaintiffs prove that the plaintiff no.3 is the owner of the National Saving Certificates and the amounts mentioned therein?
- iii) Whether the plaintiffs prove that the defendant no.1 has no right to the amount deposited in the Dena Bank and the amount of the National Saving Certificate.
- iv) Whether the plaintiffs prove that the Will dated 27/2/2003 is null and void.
- v) Whether the defendant no.1 proves that the suit is bad for non joinder of necessary parties?
- vi) Whether the defendant no.1 proves that the plaintiff no.3 is a minor and the provisions of the Civil Procedure Code are not complied with, as such the plaint is liable to be rejected.
- vii) Whether the defendant no.1 proves that she is

entitled to the amount of Rs.31,374/- collected by the plaintiff no.1 from Goa Urban Cooperative Bank, Market Branch, Panaji, Goa together with interest thereon at the rate of 10% per annum?

11. The parties went to trial in which the plaintiffs examined Jose Pereira, PW.1, Jessica Pereira, PW2, Dr. Fernando Colaco, PW3, I.O. Rodrigues, PW.4 and Deepak Vaigankar, PW.5.

12. The defendant no.1 examined herself (DW.1).

13. The learned trial court answered all the issues in the negative except the issue no.7 which was answered in the affirmative. The learned trial court by a judgment and decree dated 27/4/2006 dismissed the suit, while decreeing the counter claim.

14. Feeling aggrieved the plaintiffs challenged the same before the learned District Judge, in Regular Civil Appeal no.75/2010. The learned District Judge framed the following points for determination:

- i) Did the learned CJSD Panaji erred in holding that the Will dated 27/2003 is not null and void?
- ii) Did the Ld. CJSD Panaji erred in holding that the plaintiff no.1 is not entitled to the amounts in the fixed deposits of Joaozinho Pereira with the Dena Bank.

iii) Did the Ld. CJSD Panaji erred in holding the plaintiff no.3 is not entitled to the amount of the National Saving Certificate of Joaozinho Pereira?

15. The learned District Judge by a judgment and decree dated 4/10/2010 has dismissed the appeal. That is how the appellants are before this Court.

16. I have heard Shri D'Costa, the learned Senior Counsel for the appellants and Smt. Agni, the learned Senior Counsel for the respondent no.1. With the assistance of the learned counsel for the parties I have gone through the record.

17. It is submitted by Shri D'Costa, the learned Senior Counsel for the appellants that Joaozinho Pereira was suffering from terminal illness and was not in a disposing state of mind. It is submitted that there are several circumstances which create a suspicion about the deceased Joaozinho Pereira having consciously executed the Will in favour of the defendant no.1. The learned Senior Counsel has taken me through the Will in order to demonstrate that the Will is executed not in compliance with the provisions of the Decree No.8373 dated 20/10/1937 and in particular, Articles 25, 39 (1), 75 (1), 75 (9) and 80 thereof and Articles 1913, 1914, 1918 and 1919 of the Portuguese Civil Code and is consequentially vitiated. While elaborating the submission

it is pointed out that the notary before whom the Will was executed was called at the residence of the deceased. It is submitted that there is nothing on record to show that the presence of the notary at the residence of the deceased was requisitioned by the 'Interested Party' within the meaning of Article 25 of the Decree No.8373. The learned Senior Counsel submitted that the interested party under Article 25 would mean the 'testator', himself and not the beneficiary. It is submitted that Article 75 (1) of the Decree requires that where the documents are executed outside the Notarial office, the document should state that the Notary was “expressly called” which is lacking in this case. It is submitted that under Article 75 (9) the contents of the Will have to be read loudly by the Notary which is not shown to be done in this case and the execution of the Will is also in breach of Article 80 of the Decree.

18. The learned Senior Counsel has also taken me through Articles 1913, 1914, 1918 and 1919 of the Portuguese Civil Code, in order to demonstrate that there is non compliance with these provisions. It is submitted that all these irregularities taken together along with the admission of DW.1 that the deceased was not in his senses, is sufficient to hold that the circumstances surrounding the alleged execution of the Will are suspicious. The learned Senior Counsel in all fairness submitted that non compliance with the various

provisions will not render the Will void abinito. However, such non compliance taken together with the oral evidence renders the Will suspicious.

19. The learned Senior Counsel has then referred to an Affidavit (Exhibit 30) dated 20/2/2003 executed by the deceased. It is submitted that the signatures on the Affidavit and the Will clearly match and thus the trial court was in error in discarding the said affidavit. It is submitted that in the affidavit the deceased has acknowledged about the money in the various banks being gifted to the plaintiff no.1 and also to his niece Jessica. In this regard reliance is placed on para 5 of the Affidavit in which the deceased had stated that the Will was executed at the wish of the defendant no.1 and upon the defendant no.1 agreeing to bequeath the said amount to their niece i.e the plaintiff no.3 Jessica. It is submitted that there is nothing on record to show that the deceased was in a disposing state of mind at the time of the execution of the Will. It is also submitted that none of the attesting witnesses or the notary has been examined and thus the Will cannot be said to be proved.

20. On the contrary it is submitted by Mrs. Agni, the learned Senior Counsel for the Respondent no.1 that the law as prevailing in the State of Goa, pertaining to the execution and proof of Wills, does not require the

examination of the witnesses as a rule. Reliance in this regard is placed on the decision of this Court in the case of **Carlos Tavora and Others Vs. Maria Felicidade Fernandes E. Lobo, 2005 (4) Bom.CR 308**, in order to submit that a Notary as envisaged under the Decree No.8373 is a public servant, whose function in general, is to intervene in all extra judicial acts, which are in need of certainty and authenticity and in particular to record, inter alia, public wills. It is contended that therefore a Will made in the State of Goa under the said decree carries with it a presumption of correctness, authenticity and reliability, a presumption which has got to be accepted until the contrary is proved. The learned Senior Counsel has then referred to the various Clauses of the Decree No.8373 and the Articles of the Portuguese Civil Code in order to demonstrate that none of these Articles or Clauses of the Decree are attracted in this case. The learned Senior Counsel was at pains to point out that the appeal has been admitted only on two substantial question of law and on none of them the appellants can succeed. It is submitted that the appellants are placing reliance on the Affidavit (Exhibit 30) executed by the deceased on the day subsequent to the execution of the Will and thus the appellants cannot possibly contend that the deceased was not in a fit state of mind on the date on which the Will is executed. It is submitted that the provisions of Article 75 (9) are directory in nature and in any event there is a substantial compliance in much as the Will was read

out by the deceased himself to the Notary and to the attesting witnesses. She, therefore submits that the appeal be dismissed.

21. I have given my anxious consideration to the rival circumstances and the submission made.

22. On 20/9/2011 the present Second Appeal was admitted on the following substantial questions of law:

- (i) Whether the Will dated 27/02/2003 stands vitiated for non-compliance with the provisions of Article 1913 of the Portuguese Civil Code.
- (ii) Whether the Will stands proved without examination of the witnesses and/or the writer of the Will specially when the authenticity of the Will is under dispute?

23. During the course of the arguments, the learned Senior Counsel for the appellants in addition to the claim of non compliance with the Article 1913 of the Portuguese Civil Code, 1867 also claims that there is non compliance with Articles 1914, 1918, 1919 and Articles 25, 31(1), 75(1), 75(9) and 80 of the Decree No.8373 dated 20/10/1927.

24. I have heard the parties on all these provisions. I propose to re-

formulate the question no.1 as under:

(i) Whether the Will dated 27/2/2003 stands vitiated for none compliance with the provisions of Articles 1913, 1914, 1918 and 1919 of the Portuguese Civil Code and Articles 25, 39(1), 75(1), 75(9) and 80 of the Decree No.8373 dated 20/10/1927.

25. Indisputably Joaozinho and the defendant no.1 were issue-less. Joaozinho was suffering from a terminal illness from September-October 2002 and he died on 14/3/2003. The subject Will is executed on 27/2/2003 while there is an Affidavit (Exhibit 30), which is relied upon on behalf of the appellant, which is purportedly executed by the deceased Joaozinho on the next date i.e. on 28/2/2003. From the case as made out in the plaint and the evidence led the material challenge to the subject Will on behalf of the appellants appears to be that the Will was executed under coercion and duress inasmuch as the defendant no.1 had allegedly threatened the deceased that she will go to reside at Salcete and leave the deceased alone and it was under such coercion that the Will was got executed from the deceased. However, during the course of the arguments, the validity of the Will is also sought to be challenged on the ground of the mental condition and the disposing state of mind of the deceased. Be that as it may, admittedly the Will is a public Will executed before a notary and the Will was executed at the residence of the deceased in the presence of witnesses. It would be necessary to examine

whether the Will can be said to be executed under suspicious circumstances as claimed on behalf of the appellant owing to the non compliance of various Articles of the Decree no.8373 and the Portuguese Civil Code. The Will records that the Notary was called at the residence of the testator. Article 25 of the Decree provides that each Notary shall have only one notarial office and shall be able to exercise his functions outside such office only when his presence is “requisitioned by the interested party”, which fact shall be expressly mentioned in the notarial acts. The Article clearly speaks of a “requisition by the interested parties”, which in my considered view would also include the beneficiaries of the Will. It is not possible to accept the contention on behalf of the appellant that the 'Interested Parties', would mean the testator alone. There is a recital in the Will that the Notary was called to appear at the residence of the testator. There is a presumption which attaches to a Public Will and it is not possible to accept that merely because there is no written application, by which the services of the Notary were requisitioned that it can be held that there is any breach of Article 25 of the Decree. In any event Article 25 does not speak of any written application requisitioning the services of the notary.

26. **Article 39 of the Decree No.8373 reads as under:** The Notaries shall conserve the books, documents and indices of the respective notarial office

which should not or are not capable of being legally kept in other archives and until a transfer has not taken place.

It can thus be seen that all that Article 39 provides is that the notary shall conserve notes, books, documents of the respective notarial office and only in case of drawing of a notarial act outside the notarial office take the documents out. It is difficult to see as to how the execution of the Will can be said to be in breach of Article 39. Once the Notary records that he was called at the residence, there is a clear necessity of drawing up a notarial act outside the notarial office. In fact it is undisputed in this case that the notarial act is carried out outside the notarial office. It is not at all possible to accept the contention based on breach of the Article 39 in this case.

27. Coming to **Article 75 (1) and 75 (9) they read as under:**

Article 75- The authentic extra official documents should contain

75(1). The designation of the day, month, year and the place, specifying the house in which the documents were executed, signed when it is outside the notarial office, and in such case, to state further the notary was expressly called.

75(9). Mention of the reading out of the documents, loudly by the notary, to the parties in the simultaneous presence of them, of the witnesses and of the other intervening persons and of the reading by the interpreter

or by any of the parties or any one at their request when it is obligatory.

All that Article 75(1) provides is that the designation of the day, month, year and the place specifying the house in which the documents were executed, signed, when it is outside the notarial office, should be mentioned and it should further state that the notary was “expressly called”. The mere absence of the word “express” would not be decisive. The Will records that the Notary was called. The requirement of Article 75(1) is about recording that the notary was called and I am unable to see any non compliance with the Article 75(1) in the present case.

28. **As far as Article 75 (9) is concerned**, it pertains to a mention about reading out the document loudly by the Notary to the parties simultaneously in the presence of the witnesses and any other interested persons. In the present case it has come on record that the testator himself had read the contents. I find that a case where the testator has himself read out the Will would stand at a much better footing than the requirement of the notary reading out the contents to the testator and the witnesses and all interested persons. The reading out of the contents by the testator would afford him a better opportunity to ascertain and verify the details recorded so as to ensure that the same is in accordance with his wishes, which he intends to carry out

after his death. In my considered view the learned Senior Counsel for the appellant is right in contending that the provisions of Article 75(9) would be directory and a substantial compliance with the same would suffice. It is necessary to emphasize that in a matter dealing with the rival claims based on a challenge as well as vindication of the Will, it is necessary to keep in mind that the Courts have to apply the arm chair rule and to put themselves in the place of the testator. Here is a case where the testator was issue-less and by the subject Will has bequeathed the amounts comprising of the fixed deposits and the National Saving Certificates in favour of his wife. The fact that the testator has him self read out the contents of the Will in my considered view would be sufficient compliance of the requirements. At this stage it would be useful to make a reference to Article 1914 of the Code which reads thus:

Article 1914- Deed, reading and date of disposition-

The disposition shall be dated, mentioning therein the pale, day, month and year and shall be read in a loud voice, in the presence of the said witnesses by the notary or by the testator, if he so wishes, and signed by all.

(Emphasis supplied)

It can thus be seen that under Article 1914 the contents can be read out by the notary or by the testator if he so wishes. Although it was tried to be urged on behalf of the appellants that the provisions of Article 75(9) would prevail over Article 1914, I do not see any conflict in the two provisions so as

to consider the question as to which provision would have a overriding effect. A conjoint reading of the Article 75 (9) of the Decree and Article 1914 of the Code would make it explicit that reading out of the contents by the testator would not only be sufficient but would in fact stand on a better footing while ensuring that the testator confirms the contents of the Will. I find that there is no reason to hold that there is non compliance with the Article 1914 of the Code or Article 75(9) of the Decree No.8673 in the present case.

29. This takes me to Article 80 of the Decree No.8373 which reads thus:

-All public wills and proceedings of approval of closed will shall contain the particulars required by Articles 75 and 79, as applicable and comply with all the formalities prescribed in the Civil Code, without prejudice to what is provided in this Decree.

All that Article 80 provides is that a public will and proceedings of approval of closed will shall contain the particulars required by Articles 75 and 79. I have already made a reference to Article 75. Article 79 pertains to a person executing a document, who is deaf and dumb, which is not applicable in the present case.

30. Let us now examine the submissions in relation to the various Articles of the Portuguese Civil Code. I have already made a reference to Articles

1914 of the Code. The other Articles called into aid are:

Article 1913, 1918 and 1919 which read thus:

Article 1913- Identification, mental sanity and liberty of the testator- The notary as well as the witnesses should know the testator or be able, in any manner, to certify about his identity and that the same testator was in his perfect senses and wholly free from any coercion.

Article 1918- Continuity in the execution of the Willingness

All the formalities shall be carried out continuously and notary shall state faithfully how the same were performed.

Article 1919 – Consequence of omission of some formality-

When any of the formalities are lacking, the Will shall be of no effect, but the notary shall be held liable for damages and shall lose his job.

Article 1913 provides that the notary as well as the witnesses should know the testator or should be able, in any manner to certify about his identity and that the testator was in his perfect senses and wholly free from any coercion.

31. The Will records that there were three fit witness who vouched that the

testator is the same person, he represents and about the notary and witnesses having ascertained that the testator is of a sound mind and free from undue influence, coercion, fraud or pressures of any sorts. The Will further records that the testator stated in a clear, coherent and audible voice that he wishes to make the Will his last disposition, in order to obviate any “disputes or discussion” to the succession of his property after his demise.

32. Article 1918 provides for all formalities to be carried out continuously and the same being recorded in the Will. The Will clearly records that all the formalities were completed "sans interruption" and lastly Article 1919 speaks of the consequences of omission to carry out some formality. The provisions of Article 1919 are indeed drastic. The non compliance with any of the formalities not only makes the Will, to be of no effect, but makes the notary liable for damages and loss of job. A specific query was made to the learned Senior Counsel for the appellant, as to whether there is any particular formality which according to the appellant, has not been followed, which case is set out in the plaint or in the evidence to which the answer was that there are none. There are no other formalities pointed out about which there is any non compliance

33. A brief reference may be made at this stage to the evidence of DW.1

inasmuch as it was contended that non compliance with the various formalities taken together with the evidence of DW.1 would make the Will suspicious. DW.1 was referred to the objection Exhibit 32, which is the letter written to the Director of R.T.O. That is the objection in respect of the transfer of Tata Sumo vehicle belonging to the deceased in favour of his brother Mr. Roger Pereira. DW.1 has admitted of having mentioned in the objection that her husband was not “functioning with alertness”, on account of his sickness. She however volunteered to add that the same is in context of the condition of the testator on 13th March 2003 (when the Will is executed on 27/2/2003) on account of his sickness. There is a clear statement that on or around the date of the execution of the Will, the testator was alert. The reliance placed on the Affidavit (Exhibit 30) is also misplaced, as has been rightly submitted by the Learned Senior Counsel for the respondent. The reliance on the said affidavit was not for the purpose of showing that the testator was not in a disposing state of mind on 27/2/2003. In fact, the testator executing an affidavit on the very next date i.e 28/2/2003 would indicate to the contrary as has been rightly held by the first appellate court. It is, therefore, not possible to accept that the execution of the Will is surrounded in the circumstances which are suspicious as claimed on behalf of the appellant.

34. The learned Senior Counsel for the appellant tried to make out a distinction between a person being of a sound mind and being alert and a person being in a disposing state of mind. It is submitted that a person who is otherwise of sound mind may nonetheless be not in a disposing state of mind, on account of his illness and medication particularly when the person is suffering from a terminal illness and may be under sedation. In the first place there is no substantial question of law framed in this appeal on this aspect. Apart from that the Will specifically records about the testator being of sound mind and free from undue influence, coercion or pressure of any sorts. The Will also records about the testator stating in a loud clear and audible voice the dispensation being made, which is a clear indication about the mental condition of the testator. In such circumstances the point no.1 is answered in the negative.

35. This takes me to the question of law at serial no.2 above, which may not detain me long.

This Court in the case of **Carlos Tavora and others (supra)** had an occasion to consider a similar question. It was contended on behalf of the defendants therein that the contents of the Will have not been proved by the plaintiff by examining all the parties to the said Will. This is what is held by this Court in paras 12 and 13 of the judgment (to the extent relevant):

“ In the case at hand the plaintiffs have produced a certified copy of the said Will. In this State and in case the Will was executed with the intervention of a Notary Public, who is a public functionary under the law in force, namely Decree No.8373 dated 18/9/1922 and in accordance with Articles 1911 onwards of the Civil Code, 1867, and therefore is a public document which can be proved by production of a certified copy as provided by Section 77 of the Indian Evidence Act, 1872. Such a Will carries with it a ring or a halo of its authenticity and reliability and it is presumed to be true until disproved. 13. It is to be noted that a Notary as envisaged under the Notarial Law of Decree No. 8373 dated 18-9-22 is a public servant whose functions, under the said law, in general are to intervene in all extra judicial acts which are in need of certainty and authenticity, and in particular to record, inter alia, public wills and all other authentic extra judicial official documents or to intervene in their making. Therefore, a Will made in this State under the said law carries with it a presumption of correctness, authenticity and reliability, a presumption which has got to be accepted until the contrary is proved. In other words, every statement made by the Notary of what was said and done by him in his official capacity is to be presumed to be true until the contrary is proved. ”

36. I am in respectful agreement with the view as expressed above.

It can thus be seen that unlike the Will governed by the Indian

Succession Act, in this State where a Public Will is executed before a notary as envisaged under the Decree No.8373, there is no requirement of examination of the witnesses . The Will made in this State as has been held by this Court carries with it a presumption of correctness, authenticity and reliability. There is nothing in the present case under which it can be said that the presumption has been rebutted on behalf of the appellant. In that view of the matter the question no.2 is answered in the affirmative. In the result the second appeal is without any merit and is accordingly dismissed with no order as to costs. Decree be drawn accordingly.

C. V. BHADANG, J.

Ap/