

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.12.2018

PRONOUNCED ON : 20.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2906 of 2010

and

M.P.Nos.1 and 2 of 2010

1.Kalavathy

2.V.M.Sivakumar

3.Minor Hariharsudan

Rep. by his father & Natural Guardian,

V.M.Sivakumar

.. Appellants/Respondents

- Vs -

1.Swarnalatha

2.C.Karthikeyan

3.Minor C.Rishikesh

Rep. by his Mother & Guardian,

Swarnalatha

.. Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 384 of Indian Succession Act, 1925, r/w under Order 43 Rule 1(a) and Section 104 of Code of Civil Procedure, against the order and Decree dated 07.06.2010 passed by the learned Principal District Judge, Vellore, in Probate O.P.No.1 of 2005.

For Appellants : Mr.B.Vijay

For Respondents: Mr.G.Jermiah

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed by the Trial Court granting probate of the Wills in O.P.No.1 of 2005 dated 07.06.2010.

2. The brief facts leading to the filing of the civil miscellaneous appeal could be summarized as under :-

The respondents herein, who were the petitioners before the trial court, preferred the original petition for probate of two wills, one unregistered Will and another registered Will purportedly executed by one Adhilakshmi and M.V.Mannar Reddiyar. On 30.01.1995 and 10.12.1998.

3. It is the contention of the petitioners before the trial court that while the petitioners are daughter-in-law and grandsons of the testators, viz., Adhilakshmi and M.V.Mannar Reddiyar, the 1st petitioner having married the elder son of the testators, viz., V.M.Chandrasekaran, since deceased, the respondents are the daughter, 2nd son and grandson of the testators. Incidentally, the 3rd respondent before the trial court is the grandson of not only the testators, but also the grandson of the 1st respondent and the son of the 2nd respondent.

4. It is the case of the petitioners before the probate court that testator, Adhilakshmi was the absolute owner of the properties described in "A", "B" and "C" Schedule properties, which the testator inherited through purchase and family partition and that she was in possession and enjoyment of the same in her lifetime. During her lifetime, while in a sound and disposing state of mind and without any coercion, with a view to equally give a share of the property to her sons, bequeathed "A" schedule property in favour of her eldest son, Chandrasekaran, since deceased, while "B" schedule property was bequeathed in favour of her younger son, Sivakumar, viz., the 2nd respondent herein. Insofar as "C" schedule property is concerned, the same was bequeathed in equal share to both Chandrasekaran and Sivakumar. The movable properties were also bequeathed in equal share to her sons, mentioned above.

5. The daughter of the testator, viz., 1st respondent herein, was not given any share either in the movable or immovable properties, mention having been made in the Will that her daughter, the 1st respondent, was sufficiently provided for during her marriage.

6. Insofar as the registered Will of M.V.Mannar Reddiyar is concerned, it is the case of the petitioners that the said Mannar Reddiyar is the absolute owner of "D" and "E" Schedule properties. The said Mannar Reddiyar, while in a sound and

disposing state of mind, executed a registered Will dated 10.12.1998, bequeathing the properties to his grandsons, born to his first and second sons, viz., Chandrasekaran and Sivakumar.

7. Subsequent to the demise of Adhilakshmi on 14.08.1995 and Mannar Reddiyar on 08.08.2000, the Wills came into effect.

8. It is the further stand of the petitioners that the respondents, suppressing the above facts, have filed O.S.No.387 of 2005 on the file of the learned District Munsif Court, Poonamallee claiming share in the properties left by the said Adhilakshmiammal and Mannar Reddiyar. The said action of the respondents have prompted the petitioners to file the present petition for probate of the above Wills.

9. The above stand of the petitioners was controverted by the respondents submitting that the Wills dated 30.01.1995 and 10.12.1998 were not executed by Adhilakshmiammal and Mannar Reddiyar as averred by the petitioners, but for the hand of the 1st petitioner's husband, who has taken the signatures of Adhilakshmiammal in blank papers and has created the Will, which would be evident on a cursory perusal of the Will. It is the further stand of the respondents that the properties mentioned in 'D' schedule are ancestral property of Mannar Reddiyar inherited from his father through a registered partition deed dated 07.02.1968 and, therefore, the petitioners and respondents being the co-owners of the ancestral property, no absolute title vests with Mannar Reddiyar to bequeath the property in favour of one or the other persons. Likewise, Adhilakshmiammal is not the absolute owner of 'A' and 'B' Schedule properties and, therefore, the unregistered Will, said to have been executed by Adhilakshmiammal cannot be the basis for grant of probate. When the authenticity of the Wills itself are put to question, the probate Court should be more circumspect in granting probate of the Wills, without the same being proved in a manner known to law.

10. It is the further submission of the respondents that there is no whisper in the evidence of the petitioners as to who was entrusted with the possession of the Wills, as no executor was mentioned in the Wills. When the petitioners are not residing with the testators of the Wills, it is the duty cast upon the petitioners to demonstrate as to how they came in possession of the Wills.

11. On the basis of the above submissions, evidence was adduced on the side of the petitioners as well as the defendants. While P.W.s 1 to 5 were examined on the side of the petitioners by marking Exs.P-1 to P-5, R.W.s-1 and 2 were examined on the side of the respondents. P.W.1 is the daughter-in-law of the testators through their first son, the deceased Chandrasekaran, while P.W.s-2 is the attester of the Will, Ex.P-1 along with the deceased Mannar Reddiyar, P.W.5 is the attestors of the Will, Ex.P-2. P.W.s-3 and 4 are the scribes, who prepared the Wills, Ex.P-1 and Ex.P-2. While R.W.1 is the daughter of the testators, R.W.2 is the 2nd son of the testators.

12. The trial court framed three issues and answered them in favour of the petitioners and, accordingly, granted probate of the Wills. Aggrieved by the grant of probate, the present appeal has been preferred by the appellants.

13. It is the contention of the learned counsel for the appellants that the testator of Ex.P-1, Adhilakshmiammal, was suffering from various ailments, which is evident even from the Will, Ex.P-1. Further, the unregistered Will, Ex.P-1 having been executed on 30.01.1995 and the testator, Adhilakshmiammal having left her mortal coils on 14.08.1995, within a short period of 7 months, but the Will has not been probated till 2005, for almost 10 years. Further only one attesting witness to the Will has been examined, as the other attesting witness, viz., Mannar Reddiyar, the husband of the testator died in the year 2000 and the Will has been submitted for probate only in the year 2005. If really the Will is true and genuine as claimed by the respondents herein, the same ought to have been probated while Mannar Reddiyar was alive, as he would have been the best person to speak about the sound and disposing state of mind of the testator, who is none else than his wife. Further, Mannar Reddiyar and the testator were living separately and, therefore, in all earnestness, the said Mannar Reddiyar would have been the correct person to speak about the mental status and capacity of the testator. However, the respondents herein have not probated the Will during the life time of the said attesting witness. This by itself is a suspicious circumstance, which hits at the root of the genesis of the Will, Ex.P-1.

14. It is the further contention of the learned counsel for the appellants that the signature on Ex.P-1 alleged to be that of Adhilakshmiammal, according to the appellants was obtained on blank papers and, thereafter, the Ex.P-1 has been prepared. The learned counsel for the appellants submitted that the position

of the signatures in the Will, Ex.P-1 clearly reveals that signatures were obtained in blank papers and, thereafter, the Will has been prepared.

15. It is the further submission of the learned counsel for the appellants that the contradictions galore in the evidence of the witnesses as regards the execution of the Will, Ex.P-1, which is a handwritten Will, which only gives credence to the theory of the appellants that Ex.P-1, the Will has been prepared not during the lifetime of Adhilakshmiammal, the testator, but after her demise by the use of signatures, which were obtained in the blank papers.

16. It is the further submission of the learned counsel for the appellants that though the testators were residing separately from the respondents herein, however, the 1st respondent was an active participant in the execution of both Exs.P-1 and P-2. It is the further submission that the wife of the 2nd appellant, who is none other than the granddaughter of the testators had not been in the picture during the preparation of the Wills, but the 1st respondent, who happens to be the wife of the 1st son of the testators, had been an active participant. In such circumstance, the execution of the Will to the exclusion of the daughter, viz., the 1st appellant creates a big suspicion with regard to the alleged execution of the Wills.

17. It is submitted by the learned counsel for the appellants that except for giving their daughter in marriage and doing the niceties for her well being, no other reason, worth the mention is found in Ex.P-1, executed by Adhilakshmiammal. Further, there is no mention about when the alleged amounts were paid to the 1st appellant.

18. It is the further submission of the learned counsel for the appellant that animus attestandi is a must while making attestation. It is not only the mere attestation in the Will that is necessary but the intrinsic information contained in the Will must also be equally known to the attesting witness so that the witness knows as to what he is attesting. Non establishment of the same merely denotes that the attesting witness is merely a name lender, who has no connection with the execution of the Will.

19. It is the further submission of the learned counsel for the appellants that while P.W.1 has deposed that during the

execution of Ex.P-2 by Mannar Reddiyar, she was present, however, the said evidence is contradicted by P.W.5, the scribe to Ex.P-2. Further, there is contradiction not only in the presence of P.W.1 at the time of execution of Ex.P-2, but also the time of execution of Ex.P-2. Further, P.W.1 has deposed that she did not know when Ex.P-2 was registered. But it is the evidence of P.W.5 that Ex.P-2 was executed in the morning hours at about 7.00 a.m., and that on the evening of the same day, Ex.P-2 was registered. The above contradiction in the evidence of P.W.s 1 and 5 hits at the substratum of the petitioners case with regard to the execution of the Will, Ex.P-2. Mere registration of a Will cannot be a ground to accept the authenticity of the Will, in the light of the very many contradictions that shrouds the execution of the Will, Ex.P-2.

20. The writings on the Will, Ex.P-1 clearly creates a doubt as to its authenticity, as the same is not written uniformly, but has been written haphazardly. In one place the lines are nested with each other, while in other places, the lines are divided further apart. The manner in which Ex.P-1 is written clearly shows that after getting the signature in blank papers, Ex.P-1 has been prepared. Therefore, the trial court ought to have appreciated the same before granting probate of Ex.P-1.

21. It is the further submission of the learned counsel for the appellant that while the registered Will, Ex.P-2 contains the signature of the testator in all the pages, however, in Ex.P-1, the unregistered Will executed by Adhilakshmiammal does not contain signatures on each page of the Will. Further, the position of the signatures in the Will, Ex.P-1 and schedule to Ex.P-1 are in identical places, which creates a doubt about the veracity of the Will as spoken to by P.W.s 1 to 3.

22. It is further submitted by the learned counsel for the appellants that P.W.5, the scribe of Ex.P-2, in cross examination, has clearly deposed that there is marked deviation between the signature in the Will during execution and while the same was registered. The difference in signature throws a suspicion as to state of mind of the testator during the two phases of affixing his signatures.

23. It is submitted that the Registration of a Will does not dispense with the need of proving its execution and attestation of the documents as required by law. The same needs to be proved in a manner as for provided under Section 68 of the Evidence Act. Any deviation from the same would render the

execution of the said Will doubtful.

24. In fine, it is the submission of the learned counsel for the appellants that the discrepancies in the execution of the Wills, Exs.P-1 and P-2, the contradictions in the evidence of witnesses, viz., P.W.s-1 to 5 coupled together with the manner in which the Wills have been written and the ambiguous statements made in Ex.P-1 with regard to the amounts given to the 1st appellant throws a monkey wrench into the probate machinery and for the above reason, the probate court ought not to have granted probate in the light of the above. The failure of the trial court to appreciate the evidence in proper perspective by separating the wheat from the chaff ought to be set right by this Court by setting aside the probate granted and allowing this appeal.

25. In support of his contentions, learned counsel appearing for the appellant placed reliance on the following judgments :-

- i) H. Venkatachala Iyengar v. B.N. Thimmajamma (AIR 1959 SC 443);
- ii) Surendra Pal v. Dr. Saraswati Arora (1974 (2) SCC 600);
- iii) Bharpur Singh v. Shamsheer Singh, ((2009) 3 SCC 687); and
- iv) Niranjana Umeshchandra Joshi v. Mrudula Jyoti Rao (2004 (5) Bom CR 711).

26. Per contra, learned counsel appearing for the respondents submitted that the execution of Exs.P-1 and P-2 have been proved by examining the attesting witness as mandated under Section 63 of the Succession Act and Section 68 of the Evidence Act and, therefore, proof beyond doubt having been adduced, the trial court has rightly granted the probate.

27. It is further submitted by the learned counsel for the respondents that it is not mandatory requirement that each page of the Will needs to be signed as no contemplation of such nature has been made under the Succession Act. The execution of the Will needs to be proved beyond doubt, which has been satisfied by the respondents and, therefore, no interference is warranted with the grant of probate.

28. It is further submitted that when due execution of the Wills having been proved, minor contradictions in the evidence

of the witnesses relating to the time of execution and the registration of the Will, will not tag the documents under the suspicious document category, as the evidence of witnesses are prone to minor contradictions due to passage of time.

29. The suspicious circumstances put forth by the appellants are not grounds to deny the probate proceedings. The suspicious circumstances should be of such a nature that the very execution of the Wills is not only doubtful, but improbable and only in such circumstances, probate can be denied. Further, registration of Ex.P-2 clears all suspicion and doubts as to its execution and, therefore, the only presumption that could be drawn is that the Wills were true and genuine documents, which are beyond doubt. In this regard, learned counsel for the respondents placed reliance on the decisions in Dr.A.Ravikumar - Vs - M.Savithiri (2006 (4) LW 24) and Manickam - Vs - Sakunthala (2006 (4) LW 351).

30. Learned counsel for the respondent further submitted that the presence of propounder of the Will during its execution cannot be said to be a suspicious circumstance, as she being the daughter-in-law of the testators, her presence is a natural presence. She being a beneficiary cannot be a ground to deny probate, as the properties have been bequeathed to the legal heirs of the testators and, therefore, the presence of the beneficiary during the execution of the Wills cannot be a ground to raise the presumption of suspicion to nullify the documents.

31. It is further submitted that variance in the signature of the testator of Ex.P-2 cannot be put against the testator for the reason that there is bound to be variance due to the age of the testator and, therefore, mere variance cannot be a ground to reject the Will, when the same has been proved by the attesting witnesses.

32. Learned counsel for the respondents submitted that the reasons for exclusion of the 1st appellant has been clearly narrated in the Will, Ex.P-1. Since the 1st appellant was provided for well during the marriage and amounts were given after marriage as well, the 1st appellant was excluded. The exclusion by providing reasons, which are cogent and convincing not only adds credence to the Will, but also establishes the sound and disposing state of mind of the testator and, therefore, the state of mind of the testator reflects in the document executed by the testator.

33. It is further submitted that the Probate court has limited jurisdiction and it is not vested with powers to go into the title. The Will having been proved in a manner as required to be proved, the Probate Court was well within its jurisdiction in granting probate and, the decisions relied on by the appellants to counter the above clearly fall within the purview of proving title and, therefore, are not applicable to the case on hand.

34. The trial court has taken into consideration all the above and arrive at a just and reasonable conclusion and, therefore, no interference is warranted with the well considered order passed by the trial court.

35. This Court gave its anxious considerations to the contentions advanced by the learned counsel for the parties and also perused the materials available on record as also the order passed by the trial court.

36. Before advertng to the contentions advanced on behalf of the parties, the circumstances in which probate is granted or denied should be looked into to arrive at a just and reasonable conclusion.

37. In the case of H. Venkatachala Iyengar v. B.N. Thimmajamma (AIR 1959 SC 443), the Hon'ble Supreme Court held thus :-

"19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and

disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

(Emphasis supplied)

38. In Venkatachala's case (supra), it was also held that the propounder of a will must prove:

- (i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
- (ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind

and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

(Emphasis supplied)

39. The Hon'ble Supreme Court, in the case of Surendra Pal v. Dr. Saraswati Arora (1974 (2) SCC 600) dissected the proposition of law and held thus :-

"7. The propounder has to show that the will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain."

(Emphasis supplied)

40. In *Rani Purnima Debi v. Kumar Khagendra Narayan Deb*, ((1962) 3 SCR 195 : AIR 1962 SC 567), the Hon'ble Supreme Court, with regard to registered Will, held as under :

"There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon: (see, for example, *Vellasamay Servai v. L. Sivaraman Servai*, *Surendra Nath Lahiri v. Jnanendra Nath Lahiri* and *Girji Datt Singh v. Gangotri Datt Singh*. Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.

24. The question therefore is whether in the circumstances of the present case the evidence as to registration discloses that the testator knew that he was admitting the execution of a will when he is said to have put down his signature at the bottom of the will in the presence of Arabali. We have scrutinized that evidence carefully and we must say that the

evidence falls short of satisfying us in the circumstances of this case that the testator knew that the document the execution of which he was admitting before Arabali and at the bottom of which he signed was his will. Therefore we are left with the bald fact of registration which in our opinion is insufficient in the circumstances of this case to dispel the suspicious circumstances which we have enumerated above. We are therefore not satisfied about the due execution and attestation of this will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it."

(Emphasis supplied)

41. In *Kalyan Singh v. Chhoti*, ((1990) 1 SCC 266), the Hon'ble Supreme Court, while stressing the importance of a Will, highlighted the necessity for the Court to look at the surrounding circumstances as well, in addition to the evidence of the witnesses, before coming to a conclusion about the authenticity of the Will. In the said context, the Hon'ble Supreme Court held as under :-

"20. It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party."

(Emphasis supplied)

42. In Guro v. Atma Singh (1992 (2) SCC 507) the Hon'ble Supreme Court, stressed the need for proving a Will as prescribed under Section 63 of the Succession Act. In the said context, the Hon'ble Supreme Court held as under :-

"3. With regard to proof of a will the law is well settled that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a will by Section 63 of the Succession Act, 1925. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator."

(Emphasis supplied)

43. In K. Laxmanan v. Thekkayil Padmini, ((2009) 1 SCC 354), the Hon'ble Supreme Court reiterated the ratio laid down in its earlier decisions and the same is extracted hereunder for better clarity:-

"19. When there are suspicious circumstances regarding the execution of the will, the onus is also on the propounder to explain them to the satisfaction of the court and only when such responsibility is discharged, the court would accept the will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is on the propounder to satisfy the conscience of the court. Suspicious circumstances arise due to several reasons such as with regard to genuineness of the signature of the testator, the conditions of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case, the court would naturally expect that all legitimate suspicion should be completely removed before the

document is accepted as the last will of the testator. The aforesaid view is taken by us in consonance with the decision of this Court in Shashi Kumar Banerjee v. Subodh Kumar Banerjee and Pushpavathi v. Chandraraja Kadamba."

44. In T.Babu Singh v. Ram Sahai, (2008) 14 SCC 754, the Hon'ble Supreme Court dealt with Section 68 of the Evidence Act with regarding to examination of witnesses and in that context, held as under :-

"In terms of Section 68 of the Act, although it is not necessary to call more than one attesting witness to prove due execution of a will but that would not mean that an attested document shall be proved by the evidence of one attesting witness only and two or more attesting witnesses need not be examined at all. Section 68 of the Act lays down the mode of proof. It envisages the necessity of more evidence than mere attestation, as the words "at least" have been used therein. When genuineness of a will is in question, apart from execution and attestation of will, it is also the duty of a person seeking declaration about the validity of the will to dispel the surrounding suspicious circumstances existing, if any. Thus, in addition to proving the execution of the will by examining the attesting witnesses, the propounder is also required to lead evidence to explain the surrounding suspicious circumstances, if any. Proof of execution of the will would, inter alia, depend thereupon.

15. The court, while granting probate of the will, must take into consideration all relevant factors. It must be found that the will was product of a free will. The testator must have full knowledge and understanding as regards the contents thereof. For the said purpose, the background facts may also be taken note of. Where, however, a plea of undue influence was taken, the onus therefor would be on the objector and not on the offender."

(Emphasis supplied)

45. In Bharpur Singh v. Shamsher Singh, ((2009) 3 SCC 687), the Hon'ble Supreme Court sent a note of caution for the courts below to analyse the interest taken by the propounder in the execution of the Will before accepting the authenticity of the Will. Reiterating the ratio laid down in Venkatachala's case (supra), the Hon'ble Supreme Court held as under :-

"15. This Court in H. Venkatachala Iyengar v. B.N. Thimmajamma opined that the fact that the propounder took interest in execution of the will is one of the factors which should be taken into consideration for determination of due execution of the will. It was also held that:

"One of the important features which distinguishes a will from other documents is that the will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator."

* * * * *

17. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will :

- i. The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.
- ii. The condition of the testator's mind may be very feeble and debilitated at the relevant time.
- iii. The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.
- iv. The dispositions may not appear to be the result of the testator's free will and mind.
- v. The propounder takes a prominent part in the execution of the Will.
- vi. The testator used to sign blank papers.
- vii. The Will did not see the light of the day for long.
- viii. Incorrect recitals of essential facts."

46. In *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao* (2004 (5) Bom CR 711), the necessity of the propounder to submit proof of proper execution of the Will has been highlighted. The Bombay High Court held as under :

"33. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature

and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See *Madhukar D. Shende v. Tarabai Aba Shedage* and *Sridevi v. Jayaraja Shetty*.) Subject to above, proof of a will does not ordinarily differ from that of proving any other document.

34. There are several circumstances which would have been held to be described (sic) by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit in our opinion, would not be of much significance."

(Emphasis supplied)

47. The Hon'ble Supreme Court, in *Bharpur Singh's* case (supra) held that the provisions of Section 90 of the Evidence Act, 1872 keeping in view the nature of proof required for proving a will have no application. A will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witnesses, if an attesting witness is alive and subject to the process of the court and capable of giving evidence. (See *B. Venkatamuni v. C.J. Ayodhya Ram Singh*, SCC p. 458, para 19.)

48. The Hon'ble Supreme Court in Anil Kak v. Sharada Raje (2008 (7) SCC 695) opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role in coming to a conclusion about the genuineness of the Will. In the said context, the Hon'ble Supreme Court held as under :-

"52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation."

(Emphasis supplied)

49. In Jaswant Kaur v. Amrit Kaur (1977 (1) SCC 369) the Hon'ble Apex Court pointed out that when the will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. An adversarial proceeding in such cases becomes a matter of court's conscience and propounder of the will has to remove all suspicious circumstances to satisfy that the will was duly executed by the testator wherefore cogent and convincing explanation of suspicious circumstances shrouding the making of will must be offered.

50. Keeping the above principles laid down by the Hon'ble Supreme Court in mind in its very many decisions noticed above, this Court now takes upon it the task of analyzing whether the circumstances, as put forth by the appellants are suspicious in nature and if that be so, whether the respondents herein have proved the execution of Exs.P-1 and P-2 beyond all reasonable doubt for the grant of probate.

51. Though one of the contentions raised by the learned counsel for the respondents herein is that the necessity to prove title is not the requirement for grant of probate and it is only the execution of the Wills that need to be proved, it is to be emphasized that it is not a question of title that is being put in issue before this Court. It is a question of the genuineness of Wills, alleged to have been executed by the testators, viz., Adhilakshmiammal and Mannar Reddiyar, that is in issue before this Court. It is not necessary that the title to the property, which is the subject matter of the Wills need to be proved. If the execution of the Wills, as spoken to by the petitioners, through their witnesses, that needs to be proved so as to grant probate.

52. Insofar as the execution of the unregistered Will, Ex.P-1 is concerned, according to the evidence of P.W.s 1 to 3, the same was executed by the testator, Adhilakshmiammal, while in a sound and disposing state of mind. From a perusal of the averments, it is seen that prior to the execution of the Will, Ex.P-1, the testator was suffering from ailments. However, it is to be pointed out that though such a stand is taken by the respondents herein for the testator of Ex.P-1 to execute the Will, however, the nature of ailments have not been detailed. Ailments may be physical or mental or both. While physical ailment cannot be a ground to attack the veracity of the Will executed by the testator, however, mental ailment is definitely a ground under which the authenticity of the Will can be questioned. Mental ailment coupled with physical ailment is all the stronger for looking into the execution with a fine tooth comb. The non-furnishing of the ailment suffered by the testator is really a compelling circumstance, which has to be viewed with utmost care and caution.

53. In this regard, it is seen from the evidence of P.W.1 that the testators of both the Wills, viz., Exs.P-1 and P-2, who are the in-laws of the 1st respondent herein, were living separately. This categorically means that they were not living with the 1st respondent at the relevant point of time when the said Wills, Ex.P-1 and Ex.P-2 were executed. Further Ex.P-1 was executed by the testator on 30.01.1995. In the said Will, one of the attesting witnesses is the testator of Ex.P-2, viz., Mannar Reddiyar, who is none other than the husband of Adhilakshmiammal, the testator of Ex.P-1. After execution of the unregistered Will, the said Adhilakshmiammal breathed her last on 14.08.1995, i.e., within a period of seven months from the date of execution of Ex.P-1. Mannar Reddiyar, the testator of Ex.P-2 and one of the attesting witnesses was alive till

08.08.2000. However, the Wills have been submitted for probate only in the year 2005. This Court is at a loss to understand as to what prevented the 1st respondent herein to probate Ex.P-1 when the said Mannar Reddiyar was alive, as the said Mannar Reddiyar, being the husband of Adhilakshmiammal, would have been the best witness to speak about the mental status of the testator Adhilakshmiammal. However, for reasons best known to the 1st respondent, probate of Ex.P-1 was not claimed during the survival of Mannar Reddiyar. This is a suspicious circumstance which stares at the case of the respondents seeking probate of the Will, Ex.P-1. The eight point catalogue, enumerated in para-17 in Bharpur Singh's case (supra), in which delay in presenting the Will for probate is a suspicious circumstances, (as discussed in para-42 of this judgment) stands squarely attracted to the case at hand.

54. Further, the registered Will, Ex.P-2, executed by Mannar Reddiyar, was allegedly written on 10.12.1998. Though according to P.W.1, the said Ex.P-2 was written during the night hours of 10.12.1998 and the date on which it was registered is not within the knowledge of P.W.1, however the same is controverted by both P.W.s 4 and 5, who are the witness and scribe to the said Ex.P-2. According to P.W.s-4 and 5, Ex.P-2 was written in the early morning hours of 10.12.1998 at about 7.00 a.m. and that the same was registered on the same day at about 3.00 p.m. on the same day. This contradiction, though at first glance, may look like a minor piece of contradiction, however, on a deeper examination of the facts and surrounding circumstances, looms large, thereby, shrouding the execution of Ex.P-2 under suspicion.

55. The 1st respondent, though claims that during the execution of Ex.P-1 and Ex.P-2 she was present, however, feigns ignorance as to when Ex.P-2 was registered. On a conjoint reading of her entire testimony coupled with the testimonies of P.W.s-4 & 5, this Court is left with no other alternative but to suspect the whole transaction for the very simple reason that while the 1st respondent, the daughter-in-law of the testators is said to be present along with her husband during the execution of both the Wills, however, curiously, the 2nd daughter-in-law, who is none other than the granddaughter of the testators is not seen anywhere in the vicinity. Equally so, the daughter, viz., the 1st appellant herein is also not visible anywhere in the picture during the execution of the documents. Had the intention of the testator of Ex.P-1 really been to exclude her daughter for the reason that she had given her the required wealth during her marriage and at other times during her marital life and also during the marriage of her daughter, viz., the granddaughter of

the testator, there was no impediment for the testator to have called the 1st appellant to be present during the execution of Ex.P-1. Curiously, the daughter, as well as the daughter-in-law of the testator are conspicuously absent. However, the other daughter-in-law, the 1st respondent herein, is present during the execution of not only the unregistered Will, Ex.P-1, but also during the execution of Ex.P-2, the registered Will. When the husband of the 1st respondent, who was said to be alive on the date when both the Wills were executed and that the 2nd appellant alone was shown to be in there during the execution of Exs.P-1 and P-2, the presence of the 1st respondent during the execution of Exs.P-1 and P-2 casts a great deal of suspicion on the execution of Exs.P-1 and P-2 when she is directly a beneficiary under the said Wills.

56. The undue interest shown by the 1st respondent/beneficiary during the execution of Exs.P-1 and P-2 by her presence is by itself a suspicious circumstance, which requires proof beyond negation. Failure to erase the suspicion would go more to the weight of the evidence thereby clouding the Wills and throwing doubt on its execution. The above act of the 1st respondent being present during the execution of both the Wills, she being a direct beneficiary, the principles laid down by the Hon'ble Supreme Court in Surendra Pal's case (supra) as reiterated in the judgments noted above, stand squarely attracted and impedes the way of this Court in proceeding along the lines in which the trial court has traversed.

57. Not only the presence of P.W.1 during the execution of the Wills is a suspicious circumstance, which stares on record, a cursory glance at the unregistered Will, Ex.P-1, by itself, creates a gloomy picture, blackening the execution of Ex.P-1. A perusal of Ex.P-1 shows that it runs to six pages. While pages 1 to 4 are the contents of the Will, pages 5 and 6 pertain to the schedule of property.

58. An analysis of the said document clearly impress upon this Court that its genuineness should be put to rigorous test before its authenticity can be accepted. The reasons for the same are twofold. The first test pertains to the signature that is affixed in pages 4 and 6 of the said Will. A comparative analysis of the signatures on both the pages shows that the signatures have been affixed in identical places in both the documents. A superimposition of the papers reveal that the signatures are almost in identical places. Though at first glance, this may not be a big issue, but keeping the attendant

discrepancies in the Will, this seems to be rather a larger issue which requires in-depth evidence and analysis, which is the second reason.

59. A careful analysis of each page of the Will, viz., Ex.P-1, reveals that while in the earlier part of the Will, the spacing in many places are broader, however, in certain other portions, the spacing is nested. Further, the handwriting in the said document, taken apart on a whole, does not inspire the confidence of this Court. There is difference in the style of the writing in the first two pages and the last two pages of the Will. Similarly, the attestors, who have signed the Will, their signature reveals that after the scribe, who prepared the Will has signed, the attesor, viz., P.W.2 has signed the document, which is evident from the way in which the signature and the address is written. It is not nested within, but more than nested. It has been signed within a certain space that has been earmarked rather than the 2nd attesor signing and, thereafter, the scribe signing Ex.P-1. Furthermore, the first attesor, Mannar Reddiyar's signature also creates a doubt as to whether the same was signed after the executor executed the document, Ex.P-1 or had been taken before. This is evident from the fact that the said 1st attesor, Mannar Reddiyar has not signed below the heading witnesses, but by the side of the heading "Witnesses", which implies many things and, therefore, less said the better. The ratio laid down in Venkatachala's case (supra - relating to doubt in signatures - Para 34 of this judgment) comes to the aid of the case of the appellants.

60. Further, it is not clear as to how the 1st respondent came into possession of the Will. There is no material on record to show whether the 1st son Chandrasekaran predeceased his parents or was alive for the 1st respondent to have custody of the Wills. In the above context, the delay in getting the Wills for probate creates a serious doubt in the mind of this Court concerning the authenticity of the Wills. Further, had the 1st son predeceased the testator/(s), the Wills would have definitely gone to the hands of the 2nd son, viz., the 2nd appellant and not the daughter-in-law.

61. It is further curious to note that in both the Wills, the daughter of the testators, viz., the 1st appellant has not only been given any share in the property, but has been totally left out and that not even an iota of property, either movable or immovable has been given to her. Though in Ex.P-1 it is stated that after her marriage, amounts were given to her for

the purchase of house and that amounts were given for her daughter's wedding, however, the date on which the amounts have been given not being mentioned, the said amounts cannot be inferred to be high, as the spiraling downfall of the currency leaves a bitter taste in the mouth of even the richest and, therefore, the non-mentioning of the period during which the amounts were given is detrimental to the case of the petitioners.

62. Further, it is to be pointed out that, accepting without admitting that the said Adhilakshmiammal could have given some amounts to her daughter, however, the amounts said to have been given to her daughter for conducting the wedding of her granddaughter is beyond acceptability of even an insane mind. The granddaughter of the testator was given in marriage to the son of the testator. That being the case, the amount spent by the testator would have been on account of her son's wedding, though with her granddaughter, and could never be said to have been given for her granddaughter's wedding.

63. Though it is not mandatory that a share be given to the daughter, however, in the absence of any cogent and convincing reason, substantiated by materials on record, the amounts alleged to have been given by the testator of Ex.P-1 to the 1st appellant falling short of acceptance of any prudent mind denial of even a piece of immovable property nor an iota of movable property having been earmarked for the testator's daughter, this Court is of the considered view that no parent would leave her daughter in lurch, even had the daughter been given tons and tons of material possessions during her marriage. This creates a doubt in the mind of this Court with regard to the veracity of Ex.P-1 and whether it was executed in a manner as spoken to by P.W.s-1 to 5. The above reasoning is fortified by the decision of the Hon'ble Apex Court in Anil Kak's case (supra - Para-45 of this judgment).

64. As discussed above, though Ex.P-1 Will has been executed on 30.01.1995 and the testator passed away on 14.08.1995, but curiously the unregistered Will, Ex.P-1 has not been probated during the lifetime of Mannar Reddiyar, who died on 08.08.2000. Even thereafter, till 2005, the alleged Wills, Exs.P-1 and P-2 have not been probated, but has been submitted for probate only after the filing of O.S.No.387 of 2005 by the appellants wherein, the said original suit has been filed by the appellants herein seeking partition and separate possession of suit properties. However, only after the filing of the original suit for partition and separate possession, the Wills, viz., Exs.P-1 and P-2 have been submitted for probate. The non-probating of Ex.P-1 during the lifetime of Mannar Reddiyar

leaves a trail, which gets caught with Ex.P-2, the Will, alleged to have been executed by Mannar Reddiyar as well. Delay in probating the Wills is fatal to the case in the absence of any explanation as to why the delay had occurred. There is not even a whisper in the deposition of P.W.1 as also in the petition affidavit filed before the trial court as to what is the reason for the delay. The non-explanation for the delay in filing the original petition for probate of the Wills, viz., Exs.P-1 and P-2, coupled with the discrepancies pointed out above throws a cannonball of suspicion on the execution and the subsequent authenticity of the Wills, when the 1st respondent, the beneficiary under the Wills is also the propounder of the Wills. The above view of this Court gains weightage by the judgment of the Hon'ble Apex Court in Bharpur Singh's case (supra - Para 42 of this judgment).

65. Once this Court comes to the conclusion that the unregistered Will, Ex.P-1 is surrounded by suspicious circumstances, which affects its substratum, equally the Will, Ex.P-2 could also not be believed. To arrive at such a finding, the testimony of P.W.5 attains significance as also the averments in the Will, Ex.P-2. While the averment in the Will, Ex.P-2 speaks about the fact that the testator, Mannar Reddiyar was residing with his 2nd son, viz., the 2nd appellant herein, while the said Will is alleged to have been executed, curiously even during the execution of the said Will the 2nd daughter-in-law/granddaughter of the testator is nowhere in the picture. But even during execution of Ex.P-2, the 1st respondent is present, who is a beneficiary. Therefore, definitely an adverse inference needs to be drawn in the absence of cogent and convincing evidence, which prove the contrary.

66. Further, one other important aspect leans more towards creating a doubt on the execution and the subsequent probate of the Will. There is a specific mention in Ex.P-2 that the testator, at the relevant point of time, while the Will was executed was staying with the 2nd appellant. From a perusal of the cause title in the original petition for grant of probate, it is evident that the 1st son of the testator and the husband of the 1st petitioner is no more. It is informed that the 1st son of the testator, viz., Chandrasekaran, who is the husband of the 1st respondent herein had predeceased the testator of Ex.P-2. The Wills have been submitted for probate by the respondents herein during 2005, much after the death of both the testators as well as the husband of the 1st respondent herein.

67. In the above scenario, this Court is at a loss to understand as to how the Wills went to the hands of the respondents for it to be submitted for probate. The normal course for any person, who has executed a Will is to give the same to his son to be followed after his lifetime, if there were no differences with his sons. In the case on hand, no aspersions has been cast against the testator's sons. It is further to be pointed out, at the risk of repetition that the testator, Mannar Reddiyar was residing with his second son, the 2nd appellant herein, during the execution of Ex.P-2. Even accepting without admitting that the Will had been with the 1st son of the testator initially, however, definitely, after his demise, the testator would definitely have handed it over to his 2nd son, viz., 2nd appellant. However, such is not the case here. Not only the the Will, Ex.P-2, executed by the testator, Mannar Reddiyar is in the hands of the 1st respondent herein, but the alleged Will, Ex.P-1, executed by Adhilakshmiammal is also said to be in the custody of the 1st respondent. There is no whisper in the Wills, Exs.P-1 and P-2 that the respective testators were doubting the integrity or otherwise of the 2nd appellant herein. In such a scenario, after the demise of the said Chandrasekaran, the Wills should have come into the hands of the 2nd appellant herein, which would be the normal course adopted by any prudent person of sound and disposing mind. The above circumstance, coupled with the delay in probating the Wills and the beneficiary being in the group when the Wills were said to have been executed, creates rather a large suspicion in the mind of this Court as to the veracity of the Wills as also its alleged execution.

68. One other ground advanced by the appellants is that the deceased Chandrasekaran had played a fraud on the Court in the execution of the Wills. However, the said Chandrasekaran having breathed his last during October, 1999, the said aspect could not be proved by the appellants by calling the said Chandrasekaran to the witness box or cross examining him. P.W.1 has not spoken anything about how she came into possession of the Wills. The original petition for probate has been filed well after the filing of the suit. The circumstances, as narrated above, clearly casts a serious suspicion on the execution of the Wills.

69. Further, it is admitted even by P.W.6 that there is difference in the signature of the testator at the time of execution as well as at the time of registration. This also creates a doubt as to the soundness and disposing state of mind of the testator and as to whether his physical condition was fit enough for him to execute the said Will. This is more due to the

fact that the age of the testator is an important factor in coming to the conclusion about the sound and disposing state of mind of the testator.

70. Further, a perusal of Ex.P-2 reveals that the name of the 2nd attesting witness, who has been examined in Court as P.W.4, is available, but no signature of the said witness is available. It is not clear as to whether the said writing is the writing of the name of P.W.4 or his signature. However, prudence warrants that even if a person's signature is merely writing his name, the said person is supposed to write below the signature his name followed by his parentage name. However, in the case on hand, a perusal of Ex.P-2 reveals that the name is only written followed by the name of the father of the said witness. It would not be open for this Court to take the same as a signature. Further, the writing of the name followed by the address shows that there is quite a lot of difference between the two writings. However, this Court, at this point of time, is not inclined to dwell into the said matter. It would only be suffice to state that all is not well with the execution of Ex.P-2 as well and, therefore, the execution of Ex.P-2, though is a registered Will, does not inspire the confidence of this Court. Mere registration of a Will would not be suffice to hold that the Will is a genuine document and that all the ingredients that are necessary to come to the conclusion that the Will is genuine gets dispelled due to its registration. Registration is a formality and a safety and that does not guarantee the genuineness of the Will. The above view of this Court gets support from the decision of the Hon'ble Apex Court in Babu's case (supra - Para 41 of this judgment). In the above circumstances, mere registration of the Will without the same being properly proved in a manner known to law, as detailed above, the grant of probate for the said Will is also liable to be set aside.

71. In fine, it is to be pointed out that the guidelines as to the genuineness of the Will had been enumerated in the decision of the Hon'ble Apex Court in Bharpur Singh's case (supra). All the ingredients, that have been codified, definitely falls short in the case on hand and, therefore, genuineness of the Will, not having been established beyond suspicion, as enunciated by the Hon'ble Supreme Court in Bharpur Singh's case (supra), it would be wholly unsafe to sustain the findings recorded by the Court below.

72. The judgments relied on by the learned counsel for the respondents in Ravikumar's case and Manickam's case (supra), do not in any way promote the case of the respondents herein, as

the said judgments were delivered in totally different scenario and the circumstances in the said case are not identical to the case on hand.

73. While in Ravikumar's case (supra), the sound and disposing mind of the testator has been proved by examining the doctor, however, such is not the case here. As pointed out above, the sound and disposing state of mind cannot be merely spoken to by the attesting witnesses when the testator is said to be suffering with ailments. Similarly, in Manickam's case (supra), the matter relates to forged signature. In the present case, it is not the case of the appellants that the signature is forged. It is their case that the testators were not in a sound and disposing state of mind while executing the Wills. The state of mind of the testators not having been proved to be sound, the said case also does not come to the aid of the respondents herein.

74. This Court, looking at the issue in a broader spectrum and on an analysis of the entire evidence, both oral and documentary, and keeping in mind the ratio laid down by the Hon'ble Apex Court with regard to the authenticity of the Wills, is of the considered view that the trial court has not considered the issue in proper perspective while appreciating the materials, both oral and documentary and has mechanically granted probate of the Wills, inspite of very many inconsistencies and improbabilities in the oral and documentary evidence. Therefore, the order passed by the trial court is liable to be set aside.

75. For all the reasons aforesaid, this Civil Miscellaneous Appeal is allowed and the order passed in O.P.No.1 of 2005 dated 07.06.2010 on the file of the learned Principal District Judge, Vellore, is set aside. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Principal District Judge,
Vellore.

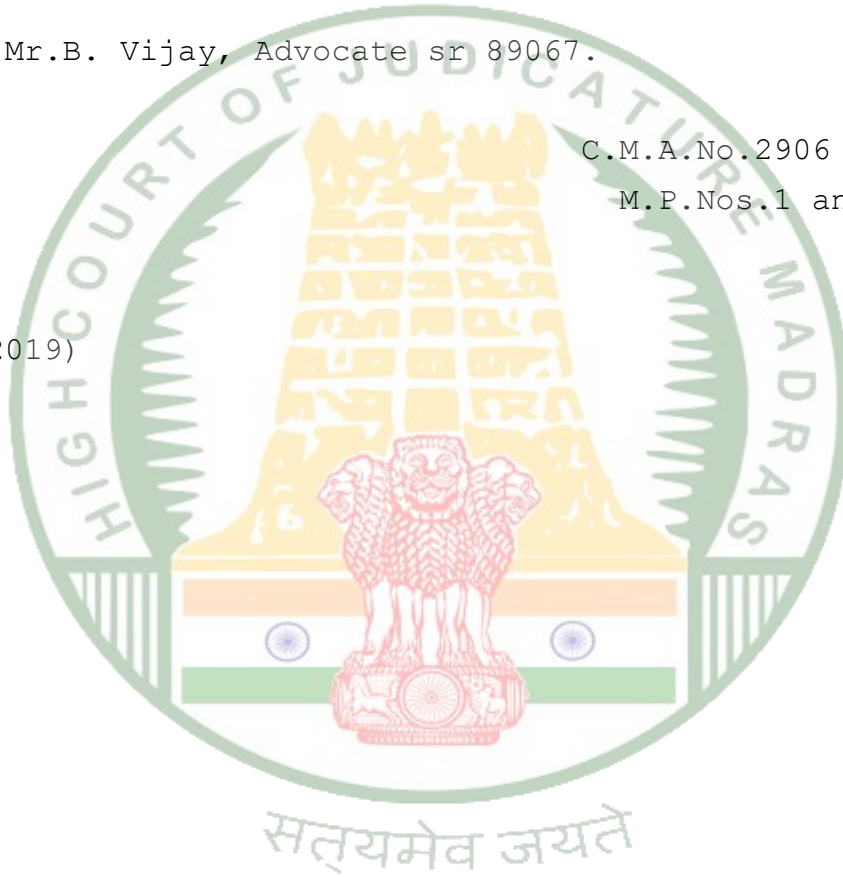
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The Section officer
VR Section, High Court, Madras 104.

+2 Ccs to Mr.B. Vijay, Advocate sr 89067.

C.M.A.No.2906 of 2010 and
M.P.Nos.1 and 2 of 2010

MG (CO)
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