

In the High Court of Judicature at Madras

Dated: 27.11.2018

Coram

The Honourable Dr.JUSTICE ANITA SUMANTH

CS. No.196 of 2012

and

TOS. No.35 of 2009

Mrs.Shylaja Subramaniam .. Plaintiff in CS. 196 of 2012/
.. defendant in TOS.35 of 2009

Vs.

1. A.N.Ajit Kumar .. Plaintiff in TOS. No.35 of 2009/
1st defendant in CS. 196 of 2012

2. Dr.Rajeswari .. 2nd defendants in CS.196 of 2012

P R A Y E R in CS. No.196 of 2012: PLAINT filed under Order VII Rule 1 of the C.P.C. read with Order IV Rule I of the O.S.Rules praying for

(i) a partition and separate possession of the Plaintiff's 1/3rd shares by dividing the suit property by metes and bounds,

(ii) a direction to the defendants to render true, proper and correct accounts for moneys received, income derived from the estate of late. Dr.A.R.Natarajan, the father of the Plaintiff in respect of scheduled properties and pay 1/3rd shares to the Plaintiff together with interest at 12% p.a. from 20.04.1999 till the date of payment,

(iii) a direction to the Defendants to pay the costs of the suit

P R A Y E R in TOS. No.35 of 2009: This petition filed under Sections 232 and 276 of the Indian Succession Act.XXXIX of 1925 for the grant of Letters of Administration praying for grant of letters of Administration with the Will annexed may be granted to the Plaintiff as one of the legatee under the Will of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiff : Mr.R.Jagadeesan for
M/s.K.V.Subramanian Associates.

For Defendant : K.Harishankar

COMMON JUDGMENT

In T.O.S.No.35 of 2009 the plaintiff prays for the grant of Letters of Administration with the Will dated 04.09.1993 annexed, to him, as one of the legatees under the Will of Dr.A.R.Natarajan.

2. In C.S.No.196 of 2012 the plaintiff prays (i) for a partition and separate possession of the plaintiffs' 1/3rd shares by dividing the suit property in metes and bounds (ii) for a direction to the defendants to render true, proper and correct accounts for the monies received and incomes derived from the estate of Late Dr.A.R. Natarajan, the father of the plaintiff, in respect of scheduled properties and pay 1/3rd shares to the plaintiff together with interest at 12% p.a. from 20.04.1999 till the date of payment and (iii) for costs.

3. The Testamentary Original Suit (in short T.O.S.) was filed in the year 2009 seeking the reliefs as aforesaid and arraying two defendants. A counter was filed by the first defendant in the T.O.S. objecting to the grant of Letters of Administration as above. Simultaneous therewith, the 1st defendant also filed C.S.No.196 of 2012 (in short C.S.) seeking partition of the suit property and various other reliefs as above.

4. Dr.A.R.Natarajan passed away on 24.04.2004. Will dated 04.09.1993 stated to have been executed by him is the genesis of the controversy between the parties. Dr.A.R.Natarajan is hereinafter referred to as 'testator', his son, Mr.Ajit Kumar, the plaintiff in the T.O.S./1st defendant in C.S. is hereinafter referred to as 'son', Ms.Shylaja Subramanian, defendant in T.O.S./plaintiff in C.S. is hereinafter referred to as 'daughter' and Dr. Rajeshwari Natarajan, widow of the testator, arrayed as the second defendant in suit, as 'D2'.

5. Common submissions in T.O.S. and C.S. have been made by Mr.R.Jagadeesan, learned counsel appearing on behalf of the daughter and Mr.Harishankar Mani, learned counsel appearing on behalf of the son and D2.

6. The testator was a medical doctor employed with the Department of Forensic Medicine, Government of Tamil Nadu. He was married to one Dr.Ambujamma, a medical doctor herself, who was an Assistant Director in the King's Institute, Guindy. Dr.Ambujamma passed away in 1966. Simultaneous therewith, her daughter, the plaintiff in C.S, left India for further studies to Canada.

7. The testator married D2 in 1972 and the son was born in 1973. The testator passed away on 02.04.2004 and, according to the son, Will dated 04.09.1993 was found thereafter amongst his possessions. Neither he nor his mother were aware of the fact that Dr.Natarajan had executed such Will till such time it surfaced after the demise of the testator.

8. The Will, spanning just over a page, is extracted in entirety below:

LAST WILL AND TESTAMENT OF DR.A.R.NATARAJAN

I, Dr.A.R.Natarajan, s/o A.Ramanathan aged 76 years, residing at New No.65 (old No.30/A), Chamiers Road, Madras-600 028, while in a sound and disposing state of mind, voluntarily and out of my own free will do hereby execute this Will, this 4th day of September 1993.

I own, possess and enjoy the plot of ground measuring 4 grounds and 347 sq.ft., and premise No.65 (old No.30/A), Chamiers Road, Madras-600 028, having acquired the same out of my self-earnings.

I have a daughter by name Sow. Shylaja Subramaniam (through my first wife Smt. Ambujamma, who was predeceased me during the year 1996), who is now living in Brazil, South America, and she has been well provided during marriage with jewels and utensils.

I have Dr. Rajeswari, my second wife and a son by her A. N. Ajit Kumar and we are all residing at the same residence.

I am getting aged and I am anxious to settle my above said house property on my second wife- Mrs.Rajeswari and my son- A.N.Ajit Kumar in the following manner.

After my life time, my wife Dr. Rajeswari, during her life time shall have all powers to collect the income, pay tax, carry out annual repairs and enjoy the same maintaining my son- A.N. Ajit Kumar.

I do hereby bequeath that my son A.N. Ajit Kumar who is now a major shall become entitled absolutely to the said house with the rights of ownership, after the demise of my wife Dr. Rajeswari.

I do hereby specifically declare that my daughter Mrs. Shylaja Subramaniam shall have no manner of right, claim or interest to and over this property bequeathed hereby.

It should come into effect after my demise. I have the right to cancel it.

In witness whereof, I Dr.A R NATARAJAN, have set my name to this my last will and Testament, this 4th day of September 1993.

SD/-
(TESTATOR)

WILL Drafted by self
Sd/-

Signed by the Testator and acknowledged By him as his last Will & Testament in our presence who are present at the time and who at his request and in his presence and in the presence of each other have subscribed our names as witnesses:

Mr.P.V.B.Mani,
M.A., B.L.
Advocate
39/18 Kalava Chetty
Street
Madras 600 002.

1. sd/-

Dr.M.SUNDARAMURTHY
54, Kalava chetty Street,
Chintadripet Madras - 2.

2. sd/-

(M.S.VASAN)
F-49, II Floor,
Chandanbala Apts
Athinson Road, Vepery
Madras - 600 007

9. As per the Will, immovable property admeasuring 4 grounds and 347 sq.ft. located at New No.65 (old No.30/A), Chamiers Road, Madras-600 028 (in short 'suit property') belonging absolutely to the Testator was settled upon the son, reserving an interest in the property as well as all incomes derived from it in favour of D2, his wife, for her lifetime. After the demise of D2, her son would have full right of ownership of the property. The testator makes it unequivocally clear that his daughter has no right, title or interest in respect of the suit property.

10. Upon coming to know of the Will executed by the Testator, the son filed the present T.O.S. seeking the grant of Letters of Administration. R2 had filed a consent affidavit in the T.O.S. for grant of Letters of Administration as sought for by the son. The daughter contests the T.O.S. on the ground that the Will was improbable, unnatural and unfair, and a forged document.

11. The submissions of the daughter in the written statement as well as advanced by Mr.R.Jagadeesan, learned counsel on her behalf, are briefly summarised in the paragraphs to follow.

12. The daughter would vociferously deny the genuineness of the Will itself pointing out that the elapse of time between the execution of the alleged Will on 04.09.1993 and the expiry of the testator on 02.04.2004 was more than ten and a half years and it was improbable, according to her, that the testator did not make any mention of the same to her during the interim period. The registration of the Will was in 1994, one year and two months after the date of Will and the signatures appearing on the Will are, according to her, forged.

13. The use of the word 'specifically' in declaring that the daughter shall have no interest in the suit property is, according to her, most uncharacteristic

of her father and therefore, the Will, in entirety, is not his doing at all. Allegations are made regarding the conduct of D2 in not permitting the daughter to stay with the testator after her marriage. According to the daughter, seeing as the daughter was staying with her husband in Brazil, the son and D2 had abused their proximity to and with the testator to coerce him into writing the alleged Will for their own wrongful gain.

14. The daughter would at pains to state that she had a very amiable and cordial relationship with her father and it was thus, not just unlikely but impossible that the present Will had been executed by her father excluding her so definitively from the ownership of the suit property. She also states, in this regard, that she had tended to her father and borne his medical treatment at Brazil. She would also object to the statement in the Will to the effect that she had been well provided during marriage with jewels and utensils, pointing out that it was factually incorrect. She had chosen her own spouse while she was staying in Canada and the marriage was not one arranged by her father. She had borne all expenses of her marriage and her father's contribution had been limited solely to his blessings.

15. It is her specific contention that the expenses towards her marriage and education had been defrayed out of the earnings of her mother who had been a doctor of repute and whose income had also been substantial. She would state that the contributions of her mother towards the purchase of the suit property had also been considerable and she thus could not be deprived of her due share of the same.

16. According to her, there was yet another reason why the Will ought to be eschewed. Her father had been suffering from Alzheimer's disease and

Dementia for many years prior to his demise and was thus mentally incapacitated to execute a document valid in law.

17. The daughter points out that the Will contains certain insertions in hand on both pages as well as other markings such as the handwritten sentence '*It shall come into effect after my demise. I have the right to cancel it*' on page (1), the name and address of the counsel being struck out on page (2) and the words '*drafted in self*' handwritten on the second page. These are, according to her, suspicious circumstances that militate against the genuineness of the document itself.

18. The name of one P.V.B.Mani, Advocate along with his address was originally written on page (2) as the person who had drafted the Will. His name and address are however struck out and the words 'Drafted by self' have been written in hand. According to the daughter, this is also a suspicious circumstance as it is highly unclear as to who had drafted the document.

19. According to her, the Will, being a typed document, would lead to the automatic conclusion that it had been forced on the testator as the general presumption was only in favour of the genuineness of a holograph.

20. The witness for the document is one Dr.M.Sundaramurthy and the address stated is '54, Kalava Chetty Street, Chintadripet, Madras 2.'. Reference is made to the fact that both the witness, Dr.M.Sundaramurthy, and P.V.B.Mani, the advocate whose name has been written and then struck off, hail from Kalava Chetty Street, Chintadripet, Madras – 2 leading to the suspicion that the witness had been known to the Advocate and was not an independent person. This circumstance also, according to her, will drive home the point that the witness was well known to the Advocate who had drafted the Will originally and was part

of the drama enacted to prop up an invalid Will that had been thrust upon the Testator.

21. She also alleges that no legal heirship certificate has been obtained by the plaintiff and annexed to the T.O.S. This averment is found to be factually incorrect as a legal heirship certificate has been duly obtained which reveals that Dr.A.R.Natarajan passed away leaving behind D2 as his widow and the daughter and son as his legal heirs.

22. The valuation of the suit property bequeathed to the son, stated to be an amount of Rs.2,00,20,520/-, is challenged as incorrect, as the property, according to the daughter, was far more valuable.

23. The propounder himself, the son, had, according to the daughter, taken active part in the execution of the Will under which he was a beneficiary. The daughter also alleges that her mother's jewellery had been taken away by D2 and appropriated wrongfully by her. The entire exercise is for the sole reason of enabling the defendants to grab a prime property at Chennai to which they were not entitled.

24. In all, there were several suspicious circumstances under which the Will is seen to have been executed that, according to her, mitigate against the genuineness of the document. She thus contests the T.O.S and has filed the present Civil Suit seeking partition of the suit property in equal shares.

25. The plaintiff relies on the following judgements/decisions in support of her stand:

(i) *B.Venkatamuni V. C.J.Ayodhya Ram Singh and others* ((2006) 13 SCC 449

(ii) *Gurdial Kaur and ors. V. Kartar Kaur and Ors.* ((1998) 4 SCC 384

(iii) *Jaswant Kaur V. Amrit Kaur and ors.* (AIR 1977 SC74)

(iv) *Dayanandi V. Rukma D. Suvana and others* (2012 (1) CTC 206)

(v) *J.Rani V. G.Manoharan & Others* (CDJ 2018 MHC 2735)

(vi) *Dhannulal and others V. Ganeshram and another* ((2015) 12 SCC 301)

(vii) *K.Geetha & Others V. V.Vasudevan & Others* (CDJ 2007 MHC 3627)

(viii) *S.R.Srinivasa and others V. S.Padmavathamma* ((2010) 5 SCC 274)

(ix) *M.V.Somasundaram V. Tamizharasi & Others* (CDJ 2017 MHC 735)

(x) *Pattu V. Krishnammal @ Singari & Others* (CDJ 2017 MHC 3555)

(xi) *Sk.Moin Pasha S/o Sk.Papamiya V. Kashinath Tukaram Katole and others* (Judgment of the Bombay High Court in S.A.No.100of 2017 dated 18.07.2018)

26. The son has filed a written statement that has been adopted by D2 vide memo of adoption dated Nil (presented in Court on 18.12.2013). The defendants argue, at the threshold, that the suit is not maintainable; that the daughter is blowing hot and cold; while on the one hand she questions the title of the suit property in the TOS stating that the property belongs equally to her mother and is not the property of the testator for him to bequeath away, on the other hand she claims a share in the suit property in the Civil Suit as the legal heir of the testator. The two stands are incompatible with and contradict each other. It is only if the testator's title to the suit property is admitted that the Civil Suit could have been filed at all seeking partition of the suit property.

27. The allegation that the testator was unwell, suffering from Dementia or Alzheimers or was incapacitated as alleged by the daughter, is denied. According to the defendants the testator had suffered a paralytic stroke in 2002 and there had been certain medical consequences that he had suffered thereafter, directly related to the stroke. However, his mental faculties were

unaltered and the allegations that the testator was suffering from either

dementia or alzheimers or mental incapacitation of any sort has been specifically denied. The defendants point out that the testator had provided well for the daughter both for her education as well as marriage. He also transferred an immovable property in Mysore that the daughter subsequently sold, appropriating the sale consideration to herself.

28. As far as the ownership of the suit property is concerned, the defendants explain that the testator had purchased the same utilizing a loan taken from the RA Puram, Co-operative Societies and repaid in instalments from his own earnings. They vehemently deny the averment that Dr.Ambujamma had funded the purchase of the suit property.

29. In fine, the defendants submit that the suit was only a counter blast to the proceedings to the testamentary original proceedings and ought to be dismissed, in limine. The defendants also point out that the valuation of the suit was itself incorrect and should be dismissed even for this reason. They would state that it is they, who have been residing and maintaining the suit property for over four decades and the plaintiff has never raised a claim in respect thereof till date knowing well that she has no interest in the suit property.

30. The defendants rely on the following case-law:

(i) *H.Venkatachala Iyengar V. B.N.Thimmajamma and others* (AIR (1959) SC 443)

(ii) *K.S.Sathyanarayanan Vs. D.Yasodha and Others* (2018(4) CTC 516).

(iii) *M.B.Ramesh (dead) by LRs. V. K.M Veeraje URS (dead) by LRs* ((2013) 7 SCC 490)

(iv) *Savithri and Others V. Karthyayani Amma and Others* ((2007) 11 SCC 621)

(v) *A.K.Gopal and 3 Others V. S. Vasanthan and 5 Others* (dated 24th April, 1992/O.S.A.No.166 of 1983)

(vi) *Dr. Shantha V. Sharada* (2003 (4) CTC 470)

31. The reliefs sought for in suit are also largely based upon averments that are similar those in the written statement to the TOS as narrated above and I refrain from repeating the same for the sake of brevity.

32. On the basis of the pleadings, the following issues were framed in the T.O.S. and C.S respectively:

Issues in T.O.S.No.35 of 2009:

1. *Whether the Will dated 04.09.1993 claimed by the plaintiff to be the last will of Late Dr.A.R.Natarajan is genuine and valid?*
2. *Whether the suit Will is surrounded with suspicious circumstances as contended by the defendant?*
3. *Whether the plaintiff is entitled to the grant of Letters of Administration with Will annexed?*

Issues in C.S.No.196 of 2012:

1. *Whether the plaintiff is entitled for partition to get her 1/3rd share in the Schedules A and B properties?*
2. *Whether the plaintiff is entitled for a direction to the defendants to render true, proper and correct accounts for the moneys received, income derived from the estate of late Dr.A.R.Natarajan, the father of the plaintiff in respect of scheduled properties and pay 1/3rd shares to the plaintiff together with interest at 12% p.a. from 20.04.1999 till the date of payment?*
3. *Whether the plaintiff is entitled for any other relief?*
4. *Whether the suit is barred by limitation and affected by the principle of ouster?*

33. In the course of trial the parties have marked the following documents:

Plaintiffs' Exhibits in C.S.No.196 of 2012:

Sl. No.	Exhibits	Date	Details of the Document
1	P1	27.09.1966	Original death certificate of plaintiff's mother
2	P2	16.05.2004	The certified copy of death certificate of Dr.A.R.Natarajan issued by the

			Corporation of Chennai
3	P3	25.07.2005	The certified copy of legal heirship certificate issued by the Tahsildar, Mylapore – Triplicane taluk
4	P4	15.02.1966	The original letter of office of the Chairman, City Improvement Trust Board
5	P5	-	Tax receipts (8 Nos.) (Site No.50 JLP 4 th Block)
6	P6	25.05.1967	Letter written by Dr.A.R.Natarajan to Mr.Ramachandriah

Plaintiffs' Exhibits in T.O.S:

Sl.No.	Exhibits	Date	Details of the Document
1	P1	04.09.1993	Original registered Will and Testament
2	P2	-	Original Death Certificate of A.R.Natarajan
3	P3	--	Original Legalheirship certificate in respect of A.R.Natarajan
4	P4	--	Consent affidavit of D2
5	P5	--	Diary maintained in the year 1993
6	P6	--	Dairy maintained in the year 1996
7	P7	--	Invitation card for the defendants' wedding
8	P8	07.02.1997	Affidavit of Dr.A.R.Natarajan dated 07.02.1997 affirming the date of birth of Ajit Kumar.
9	P9	--	Consent affidavit (unavailable on file)
10	Ex.P10 Series	--	Receipt and bills for booking of marriage hall

11	Ex.P.11 Series	--	Receipts for purchase of goods in connection with wedding.
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34. I have heard learned counsel and perused the pleadings, exhibits and case-law cited carefully. In my view, the crux of the matter rests upon the validity or otherwise of Will dated 04.09.1993, said to have been executed by Dr.A.R.Natarajan. A decision on this point as raised in issues 1 and 2 of the T.O.S will impact the result of the other issues raised before me in T.O.S. and C.S. I thus deal, at the outset, with issues (1) and (2) in the T.O.S. being the validity of Will dated 04.09.1993 and whether the same is vitiated by suspicious surrounding circumstances. The authoritative pronouncement of the Supreme Court in the case of *H. Venkatachala Iyengar vs B. N. Thimmajamma & Others* (1959 AIR 443 : 1959 SCR Supl. (1) 426), sets out a series of guidelines to follow in the matter of establishing the validity and proof of Wills as follows:

18. What is the true legal position in the matter of proof of wills ? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. [Sections 67](#) and [68](#) of the Evidence Act are relevant for this purpose. Under [s. 67](#), if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under [ss. 45](#) and [47](#) of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. [Section 68](#) deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, [ss. 59](#) and [63](#) of the Indian Succession Act are also relevant. [Section 59](#) provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate

what is meant by the expression " a person of sound mind " in the context. [Section 63](#) requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will ? Did he understand the nature and effect of the dispositions in the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would *prima facie* be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by [s. 63](#) of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the, prudent mind in such matters.

.....

21. Apart from the *suspicious circumstances* to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of

*the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* (1) " where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth ". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.*

35. I now proceed to test the objections and defences raised by the parties in the light of the above judgement. The first objection raised relates to two insertions made by hand by the testator in the will; the one at the foot of page-1 reads '*it should come into effect after my demise I have the right to cancel it.*' According to the daughter the intention of the testator that the said Will was not the last Will, is clear from the handwritten line at the bottom of page 1. Moreover, the Will is dated 04.09.1993, whereas the testator passed away on 24.04.2004. The elapse of ten and a half years from the date of the Will till his demise also leads, according to her, to the inescapable conclusion that there is a subsequent Will and the present Will was not the last Will in testament of her father. That said, no other or later Will has been produced by her as the Will of Mr.A.R.Natarajan. As to the objection itself, I find no merit in the same. It would be quite another matter, if the daughter had produced another subsequent Will of the testator or some material to indicate, even remotely, that there existed another such document. This has however, not been done and in

these circumstances, I see no reason to discredit the present Will merely because of the above hand written sentence. In fact, the daughter would have me believe that the entire Will, in so far as it was typed, except for the insertions, loses credibility. However, here is nothing in law that would require me to discredit a typed Will merely for that reason. While, the weight attributed to a holograph is substantial, that, by itself, does not mean that a Will that is not a holograph should be assumed to be non-genuine.

36. The second objection is that the Testator has struck out the name, designation and address of the Advocate 'Mr.P.V.B.Mani, M.A., B.L., Advocate, 39/18 Kalava Chetty Street, Madras - 600 002' after the phrase 'Will drafted by' and adds the word 'self' after the phrase. The testimony of Mr.M.S.Vasan (P.W.2) dated 15.02.2013, is relevant in this regard. He says that his father, (Mr.P.V.B.Mani is the father of Mr.M.S.Vasan) had been requested by the testator to prepare a Will. The testimony reveals that the discussion the testator has had with his father about the contents of Will continued when Mr.Vasan had met the testator as well. In his answer to a specific question in relation to the insertions on page 2 this is what he says:

Q: The following words found in page 2 of the Will is written by whom "self" and a cutting mark and also M.A.B.L.?

A: As I told earlier, Dr.Natarajan gave me the Will after signing the Will for my attestation as witness. Earlier when I denied who has drafted the paragraph which was shown to me Dr.Natarajan explained to me this particular paragraph I added, since because it was drafted by your father. I asked the Doctor when I am witnessing the Will when you signed it why that P.B.Mani and other thing written by you, when my father is not available when you are signing and I am witnessing then immediately he strike down.

37. I see no merit in this objection as well. An allegation of suspicious circumstances is one that the Court will have to infer from the overall surrounding circumstances in which the will has been drafted. It seems perfectly reasonable to me, in the present circumstances, that the testator desired that the Will reflect not only his intention but also his language and choice of words and hence carried out the correction to reflect that the Will and its contents were, definitively, his and not of a third party.

38. It is usual or routine for an Advocate to affix his name and contact details upon a document drafted by him, and that is what Mr. Mani appears to have done. The testator however has struck off the name of the Advocate and written 'self' to reiterate that the document is a reflection of his own intentions. I do not see anything warranting suspicion in this. On the contrary I believe it indicates clarity of mind on the part of the testator that imbues credence to the Will and the intentions of the testator. The testimony of M.S.Vasan itself appears credible. In the course of deposition, he talks neutrally about the affection that the testator has had for his daughter and the overall tenor of the testimony does not raise any suspicion in one's mind. In the light of the aforesaid narration, the insertions on pages 1 and 2 of the Will are held not to be unnatural or suspicious.

39. The argument that the son, the propounder of the Will/beneficiary under the Will, had been involved in the process of drafting, execution and registration of the Will is found to be factually incorrect. According to the son, he was away from Chennai both at the time when the will was executed and registered. His Deposition (P.W.1) recorded on 28.03.2012 contains the following statement

..... I was not present when the Will that is the subject matter of the suit was written. I was also not present when the Will was registered. I knew about the Will a few days after my father's demise. I was clearing out his cupboard after all the ceremonies were performed and at that time I located the Will.

40. The son was admittedly studying outside the city and completed his Bachelors' degree in the year 1994 and Masters' degree in the year 1995. There is no factual rebuttal established to the above averment either in cross-examination or in any of the pleadings and no evidence has been let in by the daughter to establish that the son had indeed participated in the proceedings relating to the Will itself. This objection is thus rejected.

41. The defendants in suit have also specifically argued in support of the Will and the exclusion of the daughter from ownership of the suit property stating that the daughter has been otherwise well provided for, in all respects including education and marriage. The defendants have, in support of their contention, filed as an exhibit the wedding Invitation card (Ex.P.7) in the name of the testator. They have also submitted that the daughter has received a property at Mysore that belonged to her mother. She has sold the property thereafter. Thus their contention is that the daughter has been properly provided for. The daughter denies this, contending that the expenses were met either from out the resources of her mother or from her own earnings. However, no material is produced by her to prove her contention, though that could very well have been done vide bank statements or financials. She, however, does not deny that she did receive the property in Mysore for her own benefit.

42. In her deposition (P.W.1) recorded on 20.12.2013, she says:

.....It is correct to state that there was a property in Mysore owned by my mother prior to her demise. It is correct

to state that property was gifted to my mother by her brother. It is correct to state that the property in Mysore came to be transferred in my father's name upon the demise of my mother. Witness adds: My father and myself are the legal heirs since I was studying in Canada my father took the responsibilities of transferring the Mysore property to his name. It is correct to state that my father did not exclude me from inheriting the Mysore property. The photocopy of the document shown to me is a certificate dated 24.11.1996 filed by me to certify that my father and myself are the only legal heirs of my mother. The above said document is issued by advocates. P.V.B.Mani and M.S.Vasan. I do not know personally Mr.M.S.Vasan and therefore I cannot state whether he is one of the attesting witnesses to my father's Will i.e. subject matter of TOS.35/2009. I admit that the letter dated 25.05.1967 shown to me is addressed to my mother's cousin by my father. The original letter dated 22.05.1967 is marked as Ex.P6. I do not know whether my father always intended the Mysore property to go to me. Witness adds: Since I always away from India from 1966 onwards I do not know. But I had full trust in my father. It is correct to state that in para 4 of Ex.P6 it is stated that I had written to my father about building small house in the Mysore property and perhaps I want to own the house there. Witness adds: Since it was the wish of my mother and my maternal uncle I wanted to build a house there. Though the property was subsequently transferred to my name by my father no house was built there. I do not own the Mysore property now. I sold the property in 1987.....

43. There is no doubt that the Mysore property thus was given to the daughter as she desired and this is also apparent from a letter written by the

Testator on 25th May 1967 addressed to Mr.Ramachandran, portions of which are extracted below:

..... I am enclosing herewith a letter addressed to the Chairman, City Improvement Trust Board, Mysore requesting him to transfer the ownership of the site to me, along with a Death Certificate issued by the General Hospital authority, and a Certificate from my family Advocate, which was accepted by a joint share Company as an instrument satisfactory for such transfers. I hope the Trust Board will also take it as an instrument. I have not so far secured any certificate from any authority to inherit, as I am her husband and that should be enough. Perhaps the Trust Board may require an Idemnity Bond at the most, which I think is unnecessary even. You will know better when you meet him and discuss with him.

Shyla has written me a letter stating that a small but medium house could be built there. Perhaps she wants to own a house there. It will take sometime before we could decide on this issue. Give me some breathing time and I may be in a better position to give firm orders.'

44. The position in this regard thus appears clear, unambiguous and admitted that there was an alternate property earlier belonging to the mother that had been given to the daughter. The contentions of the defendants in suit in this regard thus appear well-founded.

45. Now coming to the allegations regarding the debilitations such as Dementia and Alzheimers that the testator is said to have been suffering from, no medical evidence is placed before me in this regard. The daughter, in her deposition dated 20.12.2013 confirms this as follows:

I have not filed any documentary proof to show that my father was suffering from alzeimer's and dementia. Witness adds: Since I was

living in Brazil I do not have documents to produce but when I visited him I could see when he was talking to him that he was having memory problem and he was forgetting what was said and also my elder son who is a medical doctor when he saw him told me what the problem was and my father's second wife Rajeswari also consulted my son regarding my father's problem. I saw the problem in my father since 1996 and slowly deteriorated and in 2003 he could not even recognize me. I deny the suggestion that all that I state about my father's illness is my assumption and therefore not true.....

46. She also relies on the testimony of a friend Mrs.Shakunthala recorded on 05.12.2013 who has been long associated with the family and who deposes saying that she was party to information about the illness of the plaintiffs' father. The deposition however, poses more questions rather than provides answers. According to the witness, she was informed by D1 in 1992 that Dr.Natarajan was suffering from Dementia. She had also met the Testator and saw that he appeared to have the symptoms of Dementia. She recognised the same since her mother had also been suffering from Dementia. However, the entire deposition is uncorroborated by any evidence. Evidence could, at least, have been let in, in relation to the health condition of her mother and the fact that she had indeed been suffering from Dementia. Such evidence would certainly have been in her possession but has not been chosen to be produced.

47. Also and importantly she confirms that she did not inform the plaintiff about her meeting Dr.Natarajan and about her opinion that he was suffering from Dementia. If at all she had been of the opinion that Dr.Natarajan was suffering from Dementia it is but obvious that she would have informed her friend about it. Her testimony does not inspire confidence and leads me to

conclude that the statement about the alleged medical condition of Dr.Natarajan is also bereft of credibility.

48. The ownership of the property by the Testator is also beyond question. Though the daughter initially makes an attempt to state that the suit property was purchased by funds infused by her late mother and she thus has a share in it, she later states in the course of examination that the property was, in fact, funded by her uncle. In any event, nothing is produced before me to substantiate either averment. She states, in her deposition dated 20.12.2013 in response to a specific query as to whether any proof had been produced by her in this regard, the following:

I have not produced any documents to substantiate my allegation that the suit property was purchased by my father out of monies provided by my mother. Witness adds: The money was provided by my mother's brother. I deny the suggestion that the statement that my mother provided funds is false as I have not provided any proof for the same.

49. In the light of the above, there is no doubt in my mind that the suit property was absolutely owned by the Testator and there are no limitations on his decision as to whom to bequeath the same to.

50. The daughter also relies on a diary maintained by the testator for the calendar years 1993 and 1996. The diaries have been marked as Ex.P5 and P6, in fact, by the son. Learned counsel appearing for the daughter would labour on the entries made in several pages. For instance he points out that on Monday 6th September 1993 on Thursday 14 September 1993, a list of expenses has been written as follows:

Veg.	5.25
Dhall	30.00
Gas.	<u>10.00</u>
=	430.25/-

51. On Friday 3rd December 1993, there is a note regarding expenses incurred on bread and eggs. Similar entries have been pointed out for other days as well. Ex.P6 is the cover of the diary. A note (admittedly in the testator's hand) refers to a pan number and after an arrow states '*paper kept in the middle zip compartment of orange bag*'. Some entries of financial transactions of routine and recurring nature have been made in the diary maintained for the calendar year 1996 as well.

52. However, the diary for Saturday 4th September 1993, which is the date of the Will, does not contain any reference to execution of the same. Learned counsel emphasises this, stating that a person as meticulous as the Testator appears to be, could not have missed making a note of the date of execution of the Will. He would also have, according to them, indicated the place where the Will was being kept, in order to ensure that the same was found and acted upon. This has not been done and the Will is thus, according to them, clearly fabricated.

53. This submission, though attractive at first blush, is an afterthought. The marking of the diary was itself strenuously objected to by the daughter on the ground that the diaries do not belong to her father, the Testator, at all. A suggestion to this effect was made to the son in course of the Chief examination to which he responds thus:

I deny the suggestion that Ex.P.5 and Ex.P.6 are fabricated and they do not relate to my father.

54. That apart, it is not inconceivable that the testator would be inclined to keep the Will and connected details, including the details of execution thereof as confidential. It is certainly possible and in fact quite usual, that a document such as a Will would be executed and kept in safe custody. This, by itself, cannot lead to the conclusion that the Will was a concocted document. Moreover, the allegation that the Will was fabricated and forged should have been pursued by seeking a reference to forensic examination by a competent authority. This has not been done. On the other hand, the surviving witness to the document, Mr.Vasan (P.W.2.), in his deposition dated 05.02.2013 and the witnesses at the time of registration of the Will on 14.11.1994 (Registration seal contains the date 15.11.1994) Mr.S.S.Rajkumar (P.W.3.) and his wife Mrs.R.Gomathi have confirmed that they were in attendance at the respective times of execution as well as registration of the Will and attest to the fit state of mind and health of the Testator at the relevant times as well the fact that it was Dr.Natarajan who had signed the documents.

55. The Deposition of P.W.2 – Mr.M.S.Vasan recorded on 05.09.2011 is as follows:

..... Myself and the other attesting witness saw the Testator sign in the Will marked as Ex.P.1. Thereafter at the request of the Testator myself and the other attesting witness Dr.M.Sundaramoorthy signed our respective names in the foot of the Will Ex.P.1. My signature and the signature of the other attesting witness are found in the last page of the Will Ex.P.1. The additions in page 1 and the deletion in the last page were made by the Testator in our presence and the same have been signed by the Testator. The Testator was in a sound and disposing state of mind at the time of execution of the Will. The other attesting witness Dr.M.Sundaramoorthy is my brother and he is no more.....

56. The deposition of Mr.S.S.R.Rajkumar (P.W.3), who witnessed the Registration of the Will also corroborates this position as below:

'I know the testator even before his first marriage with Smt.Ambujammal. His first wife passed away and after few years he married Dr.Rajeswari who is my elder sister. After that I know him much more. I know that Dr.A.R.Natarajan has executed a Will dated 04.09.1993. The said Will is marked as Ex.P1. Ex.P1 Will was subsequently registered. Ex.P1 Will in the second page contains my signature as identifying witness. Ex.P1 also contains the signature of Dr.A.R.Natarajan on the 2nd page. My wife R.Gomathi is the other identifying witness. I can identify my wife's signature also in page 2 of Ex.P1. I was present along with my wife and Dr.A.R.Natarajan at the Sub Registrar's Office and there we have signed the document got it registered. I have seen Dr.A.R.Natarajan sign on the 2nd page before the Sub Registrar. Dr.A.R.Natarajan was in sound state of mind while executing the document and registering. Date of registration was 14.11.1994. The registration seal contains the date 15.11.1994 as they have taken it in their books on that date.'

57. Their evidences have not been dislodged. No doubt the parties in the matter are related; the 2nd defendant Dr.Rajeswari is the older sister of the brother-in-law of Mr.M.S.Vasan, who is Mr.S.S.R.Rajkumar (P.W.3), one of the identifying witnesses at the time of Registration, the other identifying witness being Mrs.R.Gomathi, his wife. The Advocate, who assisted the testator in drafting the Will Mr.P.V.B.Mani is the father of both the attesting witness Mr.M.S.Vasan and Dr.M.Sundaramoorthy (Though there is a discrepancy in the initials of his name, the relationship is elicited from the deposition of Mr.M.S.Vasan dated 05.09.2011). However, I do not believe that this is a suspicious circumstance. There is nothing strange in the Testator seeking the assistance of persons within the close range of family, particularly when the

testimonies of all the witnesses appear, to my mind, to be credible and neutral. They do not leave me with the impression that they were conspiring together against the interests of the daughter. The objections raised are thus rejected.

58. It appears to me, based on the evidences and pleadings discussed above that the Testator has taken a decision in regard to the suit property independently and without being influenced by any one as alleged. As far as his decision in regard to the exclusion of his daughter from ownership of the suit property is concerned, perhaps it was taken for the reason that she had already been the beneficiary of a property elsewhere. I however do not speculate on the same and only conclude that, in any event, the Will itself and the execution thereof appear, to my conscience, to be in order.

59. The plethora of decisions cited at the Bar before me are to the effect that all the relevant and surrounding circumstances should be taken into account in arriving at a conclusion as to the validity of a Will that is under dispute. In the present case, objections have been raised to the absolute ownership of the suit property by the Testator as well as to the Will itself by the daughter, though, as rightly pointed out by the defendants in the suit filed by her, she seeks partition of the property based on the Testator's title. This is a contradictory stand. Dehors this, I have also examined each of the objections raised coming to the conclusion that the same are not established by evidence. In summary, the title of the Testator to the suit property is established. His faculties, both physical and mental, have not been established to be compromised or inadequate such that they may vitiate the Will.

60. The conditions laid down under section 63 of the Indian Succession Act 1925 for a valid execution of an unprivileged Will are as follows:

63. Execution of unprivileged wills.-

.....

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.'

61. In the present case, the Will satisfies the conditions set out above. As already observed by me earlier, I do not find any suspicious circumstances in the execution or registration thereof. Most of the decisions relied upon by the daughter, incidentally, rely upon the observations of the Apex Court in H.Venkatachala Iyengar's case (supra). The observations made therein and the conclusions are specific to the peculiar facts of those cases and will not impact my conclusions in this matter.

62. In these circumstances, I reject the contention that the Will is a fabricated document. I find no circumstances that appear suspicious or unnatural in the framing of the Will or in the conduct of the parties involved in the execution and registration of the Will itself. The objections raised in this regard are rejected and issues 1 & 2 in C.S. are answered in favour of the defendants and against the plaintiff. The Will of Dr.A.R.Natarajan dated

04.09.1993 is held to be a valid Will and the plaintiff in T.O.S. is entitled to the grant of Letters of Administration as prayed for.

63. As a consequence of my answer to issues (1) and (2) in C.S., all issues in the C.S. are also answered against the plaintiff and in favour of the defendants in the Civil Suit. The plaintiff in C.S. is not entitled for partition and consequently not entitled to a direction for accounts of the income from the estate of Dr.Natarajan or paying over of any component of the same to her or any other relief.

64. T.O.S No.35 of 2009 is decreed as prayed for and Civil Suit No.196 of 2012 is dismissed. No costs.

65. The plaintiff in T.O.S.No.35 of 2009 is directed to execute a guardian bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) before the Assistant Registrar O.S.-II, High Court, Madras.

Index : Yes/No

Speaking order/non-speaking order

27.11.2018

Ska/Rkp/sl

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Dr.ANITA SUMANTH,J.

Ska/rkp/sl



CS. No.196 of 2012
And
TOS. No.35 of 2009

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