

In the High Court of Judicature at Madras

RESERVED ON
DELIVERED ON
27-07-2018
06-09-2018

Coram:

The Hon'ble Mr.Justice N.SATHISH KUMAR

Testamentary Original Suit No.49 of 2001

[O.P.No.414 of 2001]

T.S. Sridharan ... Plaintiff

Versus

1.Johanna Lobo (Deceased)
2.John Lobo
3.Gerald Lobo
4.Reymond Lobo
5.Laura Ann Shahani
6.Esther Louise Miranda
7.Davis Thomas
8.The Rev.Mother Superior
□The Little Sisters of the Poor□
No.11, Harrington Road,
Chetput, Chennai 600031 ... Defendants

Petition filed in O.P.No.414 of 2001 to allow the petitioner to prove the Will in common, from the Probate thereof, to have effect throughout the Union of India, may be granted to him.

For Plaintiff ... Mr. P.M.Subramaniam for
M/s. Pais Lobo and Alvares

For Defendants .. D1 - died

Mr.M.S.Krishnan
Senior Counsel for
M/s.Sarvabhuman Associates[for D2]

Mr.V. Raghavachari [for D3 to D5]

Mr.T.S.Baskaran [for D6]

Mr.K. Manavalan [for D7]

Mr.R. Venkataraman [for D8]

JUDGMENT

The Original Petition has been filed for grant of Probate in respect of the Will stated to have executed by Dr.L.C.Lobo on 26.10.1994 appointing the plaintiff, practising lawyer as one of the executors and the 7th defendant as another executor in respect of the property known as "Foxholes" measuring about 9.0800 grounds. 1st defendant is the wife of the testator Dr.L.C.Lobo. Defendants 2 to 6 are the nephews and nieces of the said Testator. In the written statement, defendants 2 to 6 objected the suit, taken a defence to the effect that the signature in the Will, supposedly executed by the deceased differs from what his usual signature used to be and the genuineness of the Will is also disputed. The recitals in the Will contained strange dispositions contrary to any normal intention of a man aged 67 years and the recitals are contrary to the facts. Even though the Will dated 26.10.1994 was executed by the Testator, he was under the direct influence of Mr.Davis Thomas, the co-executor mentioned in the Will and the other executor being the plaintiff.

2. The testator was under the direct influence of the co-executor/beneficiary during the last years of his life. The said Davis Thomas frequently used to visit the testator and his aged wife at their residence under the pretext of attending to their personal needs. The testator had substantial funds of his own and also had access to huge amounts of unutilised funds, in his capacity as executor of his mother's and his father's estates, of which the testator was an executor and the defendants 2 to 6 were the beneficiaries. The said Davis Thomas with the intention of generating huge investments for M/s.Metro General Credit Pvt. Ltd., had succeeded in influencing the testator to invest large amounts of the above said funds, substantial amount of which 2nd defendant is beneficiary to, into his said company. It is also apparent that the said David Thomas succeeded to have also influenced the testator in the execution of the Will.

3. The above things verified by Clause 3 of the Will. Said clause contains a stipulation that after the death of the testator's wife Mr.Davis Thomas shall have the right of residence for his lifetime and that of his wife. During this time, the rental which shall be paid to the Little Sisters of the Poor, shall be Rs.1,000/- per annum. The Will further mentions that on the death of the other executor, i.e, the plaintiff herein, his son Mr.Vikram Raghavan shall be executor and trustee in place of his father. That if Mr.Raghavan is for any reason unable to act as executor and trustee, his function will be exercised by the senior partner of M/s.Pais, Lobo, and Alwares. It is further mentioned that the second executor, the Plaintiff herein, shall be entitled to an honorarium of 5% of the net income of the estate.

4. The provisions are unnatural, which has special benefits and no reasons cited by the testator as to why the said provision has been made. The provisions read along with the fact that the testator was influenced into investing huge sums of money of his own and that of which he had no control into the company M/s.Metro General Credit Pvt. Limited, in which Mr.Davis Thomas is directly involved and interested, makes it further but obvious that there was a deep conspiracy and collusion between interested parties and the Will was executed under undue influence and coercion.

5. The Will was alleged to have been executed in the office of M/s.Metro General Credits Pvt. Ltd., and also allegedly attested by its employees Mr.Terence Shenoy and Ms.C.B.Tamilselvi. The signatures of the alleged witnesses were obtained by the authority Mr.Davis Thomas on blank papers. The Will is not genuine and conveniently does not contain the mandatory attestation clause to evidence that the attesting witnesses had signed the same in the presence of each other and in the presence of the testator after witnessing the testator signing the Will in their presence. It is the further contention of the defendant that though the testator was a Christian and highly educated and knowledgeable and had recourse to the legal advice of his second named executor, the plaintiff

and prior to that the senior partner of the law firm, he failed to register the said Will, especially when he intended to dispose the properties belonging to him in the manner as made out in the said Will.

6. It is not the case where the testator died immediately after execution of the Will and therefore did not have time and recourse to seek legal advice. The alleged disposition regarding the bequest to the charitable organisation is squarely hit by the provisions of Section 118 of the Indian Succession Act, which itself shall render the bequest invalid. It can only be assumed that the said bequest was included in the Will as a ruse to try and show genuineness of the said Will. The testator died on 15.01.1997 and the plaintiff on many occasions had informed the defendants that there was no trace of any Will and all of a sudden in July 1998 he sent a copy of the alleged Will to the husband of the 5th defendant. The above facts show that there are serious doubts on the genuineness and validity of the Will.

7. 2nd defendant sent a letter dated 07.05.1997 to the plaintiff enquiring about the estate of the testator, for which the plaintiff replied vide his letter dated 24.05.1997 that he shall revert in the matter shortly. But he neither replied nor informed about the alleged Will. Clause 8 of the Will also creates serious doubts about the genuineness of the Will. Clause '8' of the Will reads as follows: "My nephews and nieces being wicked and ungrateful wretches are deliberately excluded from any benefits under this Will." When such mention was made in the Will the testator ought to have given reason thereon and the same was not explained by the executor later on presuming as to why the testator could have made any such mention. The affidavit of assets filed by the plaintiff does not include the details of the deposits made by the testator and huge dues recoverable of which defendants have vital and beneficial interest from M/s. Metro General Credit Pvt. Ltd., the company in which Mr.David Thomas, the first named executor is the manager of the deposits and his father Mr.V.M.Thomas is a director.

8. The 7th defendant Mr.David Thomas, one of the executors has filed a written statement supporting the case of the plaintiff. It is his contention that the 1st defendant, wife of the Testator also confirmed the Will in her evidence. Dr.L.C.Lobo stated that except the Will properties they have settled other properties in the year 1972 to defendants 1 to 6. Despite the above facts defendants 2 to 6 dragged the testator Dr.L.C.Lobo to court forcing him needlessly to expend time and money on wasteful litigation to safeguard his own interest. Despite such magnanimity, the defendants 1 to 6 - to use the words of the testator himself "were, to put it mildly, "wicked and ungrateful". Hence, the defendants were expressly excluded from the bequest of the testator's property, subject to a life interest in favour of 7th defendant and his wife Mrs.Geetha Davis, who ultimately bequeathed the property to charity viz., Mother Superior, Little Sisters of the Poor, by late Dr.Lobo's last Will and Testament on 26.10.1994. Dr.Lobo's brother and defendants' father late W.A.J.Lobo was unemployed and consequently could not provide for his family. Therefore, Dr.L.C.Lobo during his lifetime, settled the properties to the defendants. The defendants took possession of the properties after the death of the 1st defendant and not allowed the defendants to enjoy the properties as per the Will. In short, it is the contention of the 7th defendant, that the Will dated 26.10.1994 left by Dr.L.C.Lobo is genuine and valid.

9. 8th defendant, the ultimate beneficiary of the estate of Dr.L.C.Lobo stated that the Will of late Dr.L.C.Lobo dated 26.10.1994 is a genuine one. They deny the allegations of the defendants 2 to 6. They denied the entire allegations of the defendants.

10. In the reply statement of the defendants 3 to 5 to the written statement of the 8th defendant they denied the allegation that the Will of Dr.L.C.Lobo dated 26.10.1994 is genuine and may be given to effect, proves the vested interest and selfishness of the 8th defendant. It is averred that the 8th

defendant was not present at the time of the execution of the Will by the testator and she came to know about the Will by one of the executors only on 19.7.1997.

11. The plaintiff in his reply statement denied the allegations of the defendants that he had never informed the defendants at any time that there was no trace of a Will. In fact, the plaintiff had two meetings with some of the defendants regarding the estate of their grandmother and grandfather during April/May 1997 at his office. In fact the husband of the 5th defendant in the late 1997 or early 1998 asked for a copy of the Will while he was in St.Mary's Church compound and said that he would be back next day for it. However, he did not come the next day but come after a few months and said that he was at sea and therefore he could not come earlier. It is the further contention of the plaintiff that he received the Will some time in February 1997 and the probate papers along with the Will were filed by him in Court as early as 15.07.1997. He denied the other allegations also. It is the contention of the plaintiff that the Will is genuine and valid one.

12. On the side the of the plaintiff, he was examined as P.W.1 and one of the attesting witnesses viz., Mr.Terence Shenoy was examined as P.W.2 and Exs.P.1 to P.22 were marked. On the side of the defendants, 3rd and 5th defendants were examined as D.Ws.1 and 2 and Exs.D.1 to D.21 were marked. 1st defendant was examined through Advocate Commissioner.

13. Based on the above, the following issues were framed for consideration:

- (1) Whether the last Will and Testament dated 26.10.1994 is valid and genuine?
- (2) Whether the execution of the Will is surrounded by suspicious circumstances and hence, invalid?
- (3) Whether the Will been executed by the Testator whilst in a sound and disposing state of mind?
- (4) To what reliefs are the parties entitled to?

14. On 14.03.2008, the following additional issue was framed:

- (1) Whether the Will is hit by Section 118 of the Indian Succession Act?

15. On 26.03.2008, the following additional issues were framed:

- (1) Is not the Will mentioning two executors Mr.David Thomas and Mr.Sridharan to act jointly and severally in valid?
- (2) Whether the bequest of a life time interest to the first executor Mr.Davis Thomas and to his wife Geetha is not hit by the Rule against perpetuity?

16. The learned counsel Mr.P.M. Subramaniam appearing for the plaintiff submitted that the Testator Dr.L.C.Lobo is highly educated person, worked in Loyola College. 1st defendant is his wife. They have no issues. The testator owned 40 grounds of land, out of which more than 30 grounds have already been settled in favour of D2 to D6 who are nephews and nieces of the Testator. The Testator retained 9 = grounds himself. Initially the relationship between the Testator and the defendants 2 to 6 were cordial. Subsequently, disputes arose between them in respect of the accounts, so the defendants 2 to 6 raised allegations against the testator. Affidavits have been filed in the court of law, making serious unjust allegation against the testator. In view of such developments, the testator subsequently, has constrained to execute the Will bequeathing the property ultimately for the benefit of the 8th Defendant [The Little Sisters of the Poor]. The testator has appointed the plaintiff and 7th defendant as executors and also made provisions for life interest

for his wife/1st defendant and thereafter the 7th defendant and his wife and thereafter the property shall go to the 8th Defendant.

17. One of the attesting witnesses also examined before this Court. His evidence also clearly proved the fact that the testator himself took a decision to execute the Will, exonerating the nieces and nephews. It is the further contention of the learned counsel for the plaintiff that the wife of the testator in her evidence clearly supported the Will. The testator has taken such a stand due to unjust allegations made against him by the defendants 2 to 6. Therefore, the execution of the Will is natural. The evidence of D.W.1 clearly shows the reason for the testator excluding the defendants 2 to 6 from the bequest. The Will itself was prepared by the Testator and attested by Mr.Terence Shenoy and Mrs.C.B.Tamilselvi. It is the further contention of the learned counsel for the plaintiff that a different stand has been taken by the defendants about the Will. The defendants are aware of the Will in the year 1997 itself. Merely because 5% of the income was given to one of the executors in the Will that cannot be a suspicious circumstance. Learned counsel for the plaintiff further contended that when the testator has already given sufficient properties to the defendants 2 to 6 and they having benefited from such settlement, made such serious allegations against the testator in the court of law in the subsequent proceedings, such a situation, it is the normal conduct of any person to exclude such persons in Will.

18. The Will was prepared by the testator himself. He is a man of knowledge and the same cannot be doubted. It is the further contention of the learned counsel for the plaintiff that merely because the 7th defendant is one of the co-executor of the Will, it cannot be suspicious circumstance. The evidence of D.W.1 also proves the animosity between the parties. Therefore, there was every reason for the testator for exonerating D2 to D6 from the Will. Mere allegations cannot be taken as suspicious circumstances. The plaintiff merely because a lawyer and the testator had acquaintance with him, that cannot be a ground to suspect the Will. D7 has also supported the case of the plaintiff. 1st Defendant wife of the testator also admitted in her evidence that the Will was executed by her husband . All these facts clearly proved that the Will is genuine and it does not suffer from any inference.

19. The learned counsel for the plaintiff relied upon the following Judgments in support of his case:

1.Seth Beni Chand (since deceased) now by LRs Vs. Kamala Kunwar and others [CDJ 1976 SC 081]

2.Savithri and others Vs. Karthyayani Amma and others [CDJ 2007 SC 1117]

3.Sushila Devi Vs. Pandit Krishna Kumar Missir and Others [CDJ 1971 SC 132]

4.Vrindavanibai Sambhaji Mane Vs.Ramachandra Vithal Ganeshkar and others [CDJ 1995 SC 113]

5.Janki Narayan Bhoir Vs. Narayan Namdeo Kadam [CDJ 2003 SC 102]

6.Mahesh Kumar (Dead) by LRs. Vs. kVinod Kumar and others [CDJ 2012 SC 196]

20. Mr.K.F. Manavalan learned counsel appearing for the 7th Defendant also supported the contention of the learned counsel for the plaintiff. He submitted that the Will is genuine, valid and proved in the Court of law and the plaintiff is entitled for probate of the Will. In support of his contention, he relied upon the following cases:-

1.Corra Vedachalam Vs. G.Janakiraman [2001 (3) CTC 283]

2.Smt.Indu Bala Bose and others Vs.Manindra Chandra Bose [AIR 1982 SC 133]

3.Smt. Malkani Vs. Jamadar and others [AIR 1987 SC 767]

- 4.Susama Bala Devi and others Vs. Anath Nath Tarafdar and other [AIR 1976 CALCUTTA 377]
- 5.Shashi Kumar Banerjee and others Vs.Subodh Kumar Banerjee since deceased LRs. [AIR 1964 SC 529]
- 6.H. Venkatachala Iyengar Vs. B.N.Thimmajamma and others [AIR 1959 SC 443]
- 7.Smt. Punni Vs. Sumer Chand and others [AIR 1995 HIMACHAL PRADESH 74]
- 8.A.V. Pappaya Sastry and Others Vs. Government of A.P. And others [AIR 2007 SC 1546]
- 9.Meenakshiammal (dead) through LRs. And others Vs. Chandrasekaran and another [(2005) 1 SCC 280]
10. Naresh Charan Das Gupta Vs.Paresh Charan Das Gupta and another [AIR 1955 SC 303]

21. M/s. M.S. Krishnan, V. Raghavachari and Mrs. Chitra Sampath, learned Senior Counsel appearing for D2 to D6 vehemently submitted that the Will propounded by the plaintiff is nothing but created one. The plaintiff and the 7th defendant are the architects who built the case. Every events when considered goes to prove that the Will is created one and shrouded with suspicious circumstances. The persons not connected to the family of the Testator are the beneficiaries of the Will is not believable. It is the contention of the learned Senior Counsels that Ex.D.18 Will of the 1st defendant in respect of same properties which is subject matter of suit will prove the fact that three persons are actually interested in creating the Will viz., 7th defendant Mr.Davis Thamas, Plaintiff Mr.T.S. Sridharan and Attesting witness P.W.2 Mr.Terence Shenoy. Ex.D.18 also proves the fact that Mr.T.S.Sridharan who is conducting the case prepared Ex.D.18 Will through his juniors. In the Will Ex.P.1 it is stated that after the death of Mr.Sridharan, his son shall be executor and trustee in place of Mr.Sridharan. At that time, his son was a student. It is further stated in the Will that all the benefits from the estate of the Testator P.W.1 entitled to 5% of net income as honorarium. The subject matter of the property is around 9 = ground land and premises which is nearer to Apollo Hospital, Chennai. The manner in which the Will was prepared goes to show that it was created in a hurried manner, taking advantage of signature of the testator Dr.L.C.Lobo obtained in a blank paper. Admittedly, the plaintiff and his senior partners were all along lawyers for Dr.L.C.Lobo. They were aware of the names of all the family members. In fact they were aware of the previous proceedings between the parties. Though the testator executed settlement in favour of the defendants 2 to 6 in the year 1972 itself, the testator and one of the defendants were made as executors in the Wills of testator father, mother i.e., grandparents of the defendants 2 to 6. As the testator was maintained the accounts, there were some disputes arisen between the nieces and nephews. Taking advantage of the above situation, now the Will has been projected as if the defendants have been totally excluded due to such dispute between them. On the other hand the evidence of 1st Defendant clearly indicates that there was cordial relationship between the defendants and the testator. The photographs adduced on the side of the defendants was admitted by D.W.1 also proved the same. Affidavit filed against the application does not mention about the huge deposit made by the testator. He was influenced to invest huge sums in D7 owned company viz., M/s. Metro General Credit Private Limited. But there is evidence to show that more than Rs.35 lakhs was invested by the testator in M/s. Metro General Credit Pvt.Ltd., which is run by 7th defendant. After the demise of the testator the 7th defendant has not returned the above investments. The plaintiff being a lawyer and one of the executors of the Will, has not taken any steps to recover that amount which has resulted in filing of the suit against the 7th defendant. All these facts clearly show that the Will has been created only to non-suit the defendants from claiming the property and the investments made by the testator in M/s. Metro General Credit Pvt. Ltd.,

22. Mr. Sridharan/plaintiff having issued notice to the bank against the alleged Will, has not issued notice to M/s. Metro General Credits Pvt.Ltd., All these facts goes to show that the interested parties colluded with each other had created the said Will. In the Affidavit of Assets the description of 9.0800 grounds have been mentioned, whereas in the Will there is no details of the property. Similarly, the Affidavit of Assets do not relate to M/s. Metro General Credit Pvt. Ltd., The evidence of P.W.1 also goes to show that D7 Mr.Davis Thomas was the General Manager of M/s. Metro General Credit and Investment Limited. Despite knowing the above fact the plaintiff had purposefully omitted to include the same in the affidavit of assets. His evidence goes to show that the very next day after the death of the Testator he came to know about the Will. But there is 2 years delay in filing of the application. His evidence and pleadings also contrary to each other in this regard.

23. It is the further contention of the learned Senior Counsels that admittedly the Will allegedly executed in the year 1994. By that time there was a clear bar under law to execute the Will in favour of the charitable uses under Section 118 of the Indian Succession Act. The Testator, according to the plaintiff, is well aware of the legal proceedings, that being so, despite the specific bar under Section 118 of the Indian Succession Act, he would not have executed the Will bequeathing the property to the Charitable uses. Otherwise, he would have deposited the Will within 6 months as contemplated in the above section. These facts clearly indicate that the Will has been created. Subsequently, Section 118 of the Indian Succession Act has been struck down by the Kerala High Court and the Honourable Supreme Court also held that the provision under Section 118 of Indian Succession Act is invalid and being violative of Art.14,15,25 and 26 of the Constitution.

24. It is the further contention of the learned Senior Counsel that in the affidavit of the attesting witnesses there were corrections made by the juniors of the plaintiff. The evidence of one of the attesting witnesses viz., P.W.2 shows that he was worked under the Metro Consultancy Services. P.W.2 says that he was a partner of 7th Defendant company. P.W.2 also in his evidence stated that he has no idea whether the Will was prepared by whom and whether the the signatures of the attesting witnesses were obtained in the Will in the morning, afternoon or in the evening. There is no evidence to show that who typed the Will. Whereas P.W.1 stated that the Will was typed in the Metro General Credit Pvt. Ltd., office and there were lot of doubts before reaching the Will to the office of P.W.1. 1st Defendant has stated that the alleged Will was sent to Mr. Sridharan by Mr.Davis Thomas himself. Whereas P.W.1 in his evidence has stated that the Will was collected from the 1st Defendant. All the facts created serious doubt about the genuineness of the Will.

25. Learned Senior Counsel further submitted that the Will was typed in a cramped manner in a single page. Signature of the testator was at the bottom of the page. At the right side corner, the writings have been typed to accommodate the sentences in a cramped manner above the signature of the testator. All these facts clearly show that no man like Dr. L.C.Lobo would have typed the Will in a cramped manner in a single line space. If the testator really thought to execute the Will he would have taken the legal aid from the plaintiff's firm. But no whisper whatsoever made in this regard. Mr. David Thomas has received huge amount from the Testator. Admittedly, he has not returned the amount. Then making him as one of the beneficiaries is also one of the suspicious circumstances.

26. It is the further contention of the learned Senior Counsel that different typewriters are used to type the Will. The plaintiff and the 7th defendant took the draft to the person and typed and the 7th defendant, plaintiff and P.W.2 created the Will and made it as last testament of the testator. But the 7th defendant has not been examined . He has appeared to have given consent for the 1st defendant. Whereas he has filed Written statement after 1st Defendant was examined. All these facts created serious doubt about the Will. 7th defendant also close to the testator and took advantage of the psychological problems in the family and the strained relationship between the parties. Though first

defendant admitted the Will in the evidence, Ex.D.18 when carefully read, clearly shows that the 1st defendant aged about 83 years had acted to the tune of the executors. Once he appointed the Plaintiff as the executor, it is the normal conduct of the testator to inform the same to him. It is the evidence of P.W.1 that the deceased also gave him Rs.5,000/- towards funeral expenses. Despite the above fact P.W.1 remained silent and not enquired the deceased anything about the Will is against the the normal human conduct. Attesting witnesses addresses are also not in the Will. One of the attesting witnesses is partner in the 7th defendant firm. The above facts clearly show that the entire Will is created for their own benefit. Even in the affidavit of the attesting witnesses the signature was obtained in place marked 'x'. It is attested by one of the junior advocates. All these facts created serious doubt about the execution of the will by Dr.L.C.Lobo. Hence, learned Senior Counsel submitted that the executors who have given benefit under the Will have to dispel, serious suspicious circumstance surrounding the Will. Hence, prayed for dismissal of the suit.

27. In support of their contention, the learned Senior Counsel relied the25. following citations of various courts:-

1.Gurdial Kaur and others Vs. Kartar Kaur and Others [AIR 1998 SC 2861]

2.Smt. Jaswant Kaur Vs. Smt.Amrit Kaur and others [AIR 1977 SC 74]

3.Surendra Pal and others Vs. Dr.(Mrs) Saraswati Arora and Another [(1974) 2 SCC 600]

4.John Vallamattom and another v. Union of India [AIR 2003 SC 2902]

28. Judgments cited by both sides carefully perused. There cannot be any dispute with regard to proposition laid down in the above judgments. It is also well settled that each case has to be decided on the facts and circumstances of each case.

Issue Nos.1 to 3

29. The plaintiff is the practicing lawyer said to be the executor of the Will left by Dr.L.C. Lobo come before the Court for grant of Probate. The co-executor Mr.Davis Thomas was impleaded himself as 7th Defendant. He has also supported the Will. From the admitted case and narration, the following facts are not in dispute.

30. Dr.L.C.Lobo originally had 41 grounds in the prime locality near just Apollo Hospitals, Chennai. In the year 1972 by a deed of settlement, around 32 grounds of land was settled to the beneficiaries, defendants 2 to 6, on certain conditions. The remaining 9 = grounds retained by Dr.L.C. Lobo. This fact is not in dispute.

31. 1st Defendant - wife of the Testator Dr.L.C.Lobo was also examined through Advocate Commissioner. Her evidence clearly indicates that Late Dr.L.C.Lobo studied in America and England and he worked as Professor in Loyola College, Madras. He died on 15.01.1997 due to heart attack. When she was examined through Advocate commissioner before other witnesses being examined, an attempt was made to her to admit the Will during the examination. But at the initial stage when the Will was shown to her she could not identify as she required spectacles to read. Her evidence further shows that most of the times whenever the Testator/husband takes decision, he used to consult 1st defendant. After several attempts to get admission about the Will and finally with torch light she identified the Will and signature was that of her husband.

32. In the cross examination by the 6th defendant she has stated that she used to go to 7th

Defendant office. The Will has been typed in the 7th Defendant office. Her evidence also goes to show that they invested an huge amount in Mr.Davis Thomas company. The money was not returned to her. Further, her evidence shows as if she understood that all the immovable properties bequeathed herself, she appears to have told her husband that better they could give it to charity. When such answer was recorded by Advocate Commissioner, objection was raised by the counsel for the plaintiff. 1st Defendant at the relevant time was aged about 83 years. After much persuasion after giving a torch light she identified the signature and that she admitted that the writing in the Will is that of her husband. The evidence of 1st Defendant goes to show as if she was under the impression that everything was given to her; therefore she told her husband to bequeath the same to the charity. This particular answer was given by the 1st Defendant was objected by the plaintiff's counsel. Those objections to such answer cannot be ignored altogether. It will have relevant to other aspects.

33. When the cross examination by the other defendants, she has answered that only Mr. Terence Shenoy and Mrs.Tamil Selvi were the executors of the Will and she has admitted that she has not filed any written statement in the suit. She has also stated that the Will was in Mr.Davis Thomas office. After her husband's death, 7th defendant had spoken to them and told that he was having the Will and told that he would send it to the 1st defendant immediately. She told him to send to Mr.Shridharan viz., P.W.1/plaintiff. It is also admitted that the original Will was directly passed on to Mr.Shridharan only in the afternoon. Mr.Shridharan came with original Will and copy for her. It is the specific admission of 1st defendant that she did not see the Will before Mr.Shridharan brought to her. When a specific question was put to her that any other document containing her husband's signature was filed, she has stated that she did not know anything about that. Further her evidence also clearly indicates that she had attended the marriage of one Laura who is one of the defendants helped her. It is also admitted that she also went to the house of the defendants and photographs also very well present. The manner in which the evidence of 1st Defendant was recorded through Commissioner and a woman of 83 years giving evidence wherein initially she could not identify the Will without the aid of the torch light and she said only Mr.Terence Shenoy and Mrs.TamilSelvi are the executors. She did not see the Will before it reached through Mr.Sridharan. Still she has a cordial relationship between the defendants, even after the death of her husband, clearly indicates the fact that she was examined only for the purpose of proving the Will by some or other.

34. It is further to be seen that the age of the 1st defendant is 83 years. Her evidence read along with Ex.D.18 said to be the last Will and testament of the 1st defendant aged about 84 years executed on 9.11.2001. It is a registered Will. Though this Will Ex.D.18 has not been proved in the manner known to law, for assessing the evidence and conduct of the parties, I am of the view that this document is very relevant for the purpose of assessing the evidence of 1st Defendant and other witnesses. Though Ex.D.18 not proved in law to be admissible, the purpose of proof required under law to give effect to the Will of the person. Whereas Ex.D.18 is not relied by the plaintiff to give effect to the bequest. Hence, I am of the view that to assess the conduct of the parties, Ex.D.18 would be relevant and its contents can be looked into as long as no right under Ex.D.18 is claimed to be established. It is to be noted that though the 1st defendant was examined and cross examination was over on 9.4.2003, in the chief examination no question whatsoever put with regard to the Will allegedly executed by the 1st defendant on 09.11.2001.

35. In Ex.D.18 Will present plaintiff Mr. Sridharan and one Mr.R.Sureshkumar were appointed as executors and trustees. It is also made clear that Mr.R.Sureshkumar all times when he acts should take the concurrence of Mr.T.S.Sridharan. In case Mr.T.S.Sridharan dies before his estate is wound up, Mr.R.Sureshkumar would co-opt Mr. Arul son of late N.Amirtghalingam. It is curious to note that all executors viz. Mr.R.Suresh Kumar, Mr.T.S.Sridharan and Mr.Arul are practising lawyers and all from the same office. It is further to be noted that above Will was executed in respect of the same

property which was subject matter of the present Will viz. Ex.P.1. There are several clauses made in the above Will Ex.D.18. One such clause is as follows:

□The legacies hereafter given by me may be paid only at the discretion of my executors and when there is sufficient funds available after payment of taxes, fees etc., and only after the property is sold.□

36. It is further to be noted that there is a clear mention made out in the Will with regard to the subject matter of the suit Will viz., Ex.P.1.

□My husband had bequeathed □Fox Holes□ measuring little more than 9 grounds inclusive of 2 Bungalows to the Mother Superior, Little Sisters of the Poor, to take effect after the life time of Mr. & Mrs.Davis with certain stipulations. I understand that this bequest is void under certain provisions of the Indian Succession Act and therefore I will inherit the entire property. I intend to sell my property in my life time and I have therefore commenced the process by making enquiries with prospective purchasers. If no sale or sale agreement is concluded within my life time, then, I direct my executors to sell my entire property and also my shares and debentures inherited by me from my late husband and after transferring the same to my name or to the names of my executors.□

37. In the above Will there is specific clause is also mentioned in Clause No.20 that,

□I have already agreed to pay a sum of Rs.30,00,000/- (Rupees thirty lakhs only) to Mr.Davis Thomas and his wife Mrs.Geetha Thomas jointly relinquishing their right of residence in □Fox Holes□ thereby enabling me to make the bequest as I wish to.□

38. Clause 25 reads as follows:

□25. Mr.T.S. Sridharan is entitled to a remuneration of 6% of the value of the estate and Mr.R.Sureshkumar 2.5%. This will be a charge on the estate. My executors shall make necessary arrangement by appointing other trustees or executors later on to carry out the terms of my Will. They will also be entitled to a remuneration in line with the costs at that time. Mr.T.S.Sridharan is also entitled to his legal fees as well. □

39. The Will has been prepared by the office highly connected with the plaintiff and one of the attesting witnesses Mr.Kathirvelu is also a lawyer and junior of the plaintiff herein. This fact of executing another Will in respect of the same property not even put to 1st defendant while she was examined in the case by the plaintiff. These facts cannot be ignored altogether. The manner in which the benefits been given in the Will including the executors and given them a power to nominate some other executors and giving them absolute right to sell the property and giving them remuneration from the value of the property. More than 8% value of the property income giving a specific amount to the 7th defendant herein clearly probablise the defendant's case that the plaintiff and 7th defendant are more interested in this transaction who were in active confidence and in a position to dominate the Will of the woman of 83 years of age who was under their control and merely because she has admitted the execution of the Will of her late husband, this Court is not in a position to hold that such admission itself is sufficient to prove the Will.

40. Now, coming to the facts of the present case, P.W.1 is a lawyer by profession. As per his admission he was originally enrolled in the year 1968. His father-in-law M/s.S.A.P.Alvares was his senior in the office of M/s.Pais, Lobo & Alvares. It is also admitted by P.W.1 that after his induction into the firm of his father-in-law he has started looking after the legal affairs of Dr.L.C.Lobo, the testator herein. The said Dr.L.C. Lobo had the normal trust and faith on him to entrust the legal matters. He is familiar with the legal affairs of Dr.L.C.Lobo. P.W.1's father in law died during March 2000. He was also dealing the litigation of Late Dr.L.C.Lobo, his nephews and nieces who are the defendants wrho are the defendants herein. The plaintiff also aware of the personal affairs of Dr.L.C.Lobo and his way of thinking. He has also admitted that he had been often meeting with

Dr.L.C.Lobo, between 1994 □ 1997. Dr.L.C.Lobo did not have any other lawyer except himself. From P.W.1's own evidence, makes it clear that the plaintiff was in a position of active confidence and was in a position to dominate the Will of Dr.L.C.Lob. His evidence also further goes to show that Mr.Davis Thomas was only an employee or the General Manager of Metro General Credit and Investment Limited and he has also admitted in his evidence that Dr.L.C.Lobo had deposited money in Metro General Credit and Investment Limited. But as a lawyer and executor, P.W.1 has not taken any steps to recover the so called investments made by Dr.L.C.Lobo with M/s. Metro General Credit and Investment Limited. Even in the Affidavit of the Assets the amount deposited in M/s. Metro General Credit and Investment Limited by Dr.L.C. Lobo has not been mentioned. From his admission it is very clear that the plaintiff is also aware of the dispute between the testator and his nephews and nieces i.e. the defendants 2 to 6 in respect of the accounts of the estate of the testator's father and mother, who are grandparents of the defendants.

41. It is curious to note that Ex.D.13 and Ex.D.14 are the settlement deeds in respect of certain properties made in favour of the defendants 2 to 6. The above documents were prepared in the plaintiff's office in the year 1972 itself. These facts clearly highlighted certain aspects that the entire affairs of the family is known to the plaintiff right from the year 1972. Similarly, the title deeds of the entire property known as "Fox Holes" is also kept in the safe custody with the plaintiff which is also admitted by him in his evidence. It is the evidence that those documents were in safe custody in the bank. When the question was put to him in which bank the title deed was deposited, the plaintiff has given an answer to the effect that he is not willing to answer that question. From the very beginning, the plaintiff is aware of the affairs of the family. In fact title deed is with him, he was not prepared to answer to the effect where the title deed kept. These facts clearly indicate that the plaintiff is more interested in the benefits from the property. There is no reason for him even not to disclose the name of the bank where the title deeds of the property kept. These facts clearly give an inference that the plaintiff is more interested in the benefits of the property. Similarly being an executor and having known the entire family affairs and particularly when a huge amount has been deposited in M/s.Metro General Credit and Investments Limited by the testator and those amounts were not returned to the Testator or his wife who was aged about 84 years, being a family lawyer and alleged executor he has not even taken any steps to recover the amounts. On the contrary, he suppressed the above aspect in the affidavit of assets despite knowing the fact that the investments were made with Mr.Davis Thomas. All these facts probabilise the defence theory that the plaintiff and 7th defendant have interest in the property and the Will.

42. Now, in the above back ground it has to be seen whether the Will dated 26.10.1994 said to have been left by Dr.L.C.Lobo is true and genuine.

43. Admittedly, in respect of the estate of grandparents of defendants 2 to 6 and father and mother of the testator, there were some disputes emanated from the parties in respect of certain accounts which lead to filing of Original Petition No.97 of 1982 by the defendants 2 to 6, wherein certain allegations have been made against the testator for mismanagement of the funds of the estate. Therefore, they come up with the application for removal of Dr.L.C.Lobo from the executor. In the above application counter has been filed by Dr.L.C.Lobo. The affidavit of the respondents marked as Ex.P.16 and the counter of Dr.L.C.Lobo marked as Ex.P.17, wherein he denied the allegations of the petitioners. It is the categorical assertion of Dr.L.C.Lobo that the family of the testator has always been a closely knit one and the relationship between the members of his family were cordial. This relationship continued between him and the petitioners. He had been very keen on helping the petitioners and also narrated that he has settled the properties to them. But he had been harassed enough by the defendants 2 to 6 by their hostile attitude. The entire counter affidavit would go to show that he has denied the allegations of the petitioners. Except this, there was no serious allegations against them. These allegations and counter allegations were made in the year 1992.

Regarding the fate of the application, no materials have been placed by both sides. From the Ex.P.16 affidavit, Ex.P.17 counter and Ex.P.18 reply affidavit filed in the year 1992, it could be seen that the testator and the defendants made some allegations against each other in respect of estates of Dr.L.C.Lobo's father and mother who are grandparents to the defendants 2 to 6. They sought the accounts in the year 1992. If really the testator was offended by such allegations made in the year 1992 and decided to change his mind to exonerate the defendants 2 to 6 from any of the remaining properties, any normal conduct of human being would be to take immediate action in this regard. His minimum reaction would have been otherwise either to dispose of the property to some other name or write a settlement or Will immediately. There is no reason or evidence available to show that the bitterness among the testator and the defendants 2 to 6 continued even after such allegations.

44. Dr.L.C.Lobo as the learned person, he had wide knowledge. Even he decided to will away the property he would have definitely informed the same to P.W.1, who is all along his legal adviser in all his matters. But P.W.1 in his evidence stated that he was not aware of the Will until the same has reached in his hands. It is further to be noted that even the testator has given him Rs.5,000/- to his funeral expenses, P.W.1 not enquired the testator about any Will wrote by him. These facts create some serious doubts in the mind of the Court. Of course, testamentary court is a court of conscience and not a court of suspicion. On analysing the above fact, particularly the manner in which the Will sought to be projected creates some doubt in the mind of this Court. Therefore, it is the duty of the propounder to dispel all the suspicious circumstances when the suspicion is inherent in the transaction itself. Initial onus always lies on the propounder, not only to prove the execution and attestation of the Will but also to dispel the suspicious circumstances attached to the Will. As already discussed, in Ex.D.18 the Will executed by the 1st defendant, several benefits offered not only to the plaintiff but also to his juniors. Now, Ex.P.1 when carefully seen, Ex.P.1 dated 26.10.1994 said to have been typed by the testator himself. Though the Will contains 10 paragraphs, all the paragraphs were typed in cramped manner. The testator is not an ordinary layman. If he had an intention to bequeath the property by a Will, he could have done it in a proper manner. There was no reason to accommodate the sentences in a cramped manner. This aspect also creates doubt about the genuineness of the Will. In the Will dated 26.10.1994 one Mr.Davis Thomas, 7th defendant and Mr.T.S. Sridharan, plaintiff were appointed as executors they act jointly and severally. It is to be noted that the recitals in the Will shows that the testator wife have a right of residence during her life time. After her life time, 7th defendant and his wife have a right of residence for their life time and thereafter the property goes to the Little Sisters of the Poor, Horrington Road, Chetpet, Chennai.

45. Clause 4 of the Will goes to show that on the death of Mr.Sridharan, his son Vikram Raghavan shall be the executor and trustee in place of his father. If Mr. Raghavan is for any reason unable to act as executor and trustee, his function will be exercised by the Senior partner of M/s.Pais, Loba and Alvares. The second executor will be entitled to an honorarium of five per cent of the net income of the estates. It is to be noted that Mr.Vikram Raghavan, as per the evidence, was a student at the relevant time. He is the son of the plaintiff herein. The testator make him as executor on the death of Mr.Sridharan and giving them 5% of the net income of the estate makes it clear that the executor has some interest in the Will.

46. It is to be noted that admittedly, by the registered documents 32 grounds have already been settled in the suit properties. Only 9= grounds retained by the testator. If the testator had intention to bequeath those properties, the man of such knowledge, he would have clearly described the nature and extent of the property which would be the subject matter of the Will. Whereas the Will

properties named as entire "Fox Holes" which is more than 40 grounds. This also one of the grounds to suspect the Will. Two of the attesting witnesses signed in the Will but none of them have given their fathers' name nor residential address. But both of them given the address of C/o M/s.Metro General Credits, Greams Road, Madras 6. The testator signature found in the right side bottom of the Will, in between the sentence 'SIGNED BY ME THIS TWENTY SIXTH DAY OF OCTOBER 1994' and below the last line of the Will. The manner in which the sentences were accommodated above the signature is also creates a serious doubt about the genuineness of the Will. Further, the signature of the testator found in two different ways, on bare comparison also creates doubt. For example in the original signature found in the bottom of the Will and also the signature in Clause-7 of the Will there is a correction which was attested by the testator which differs. The signature at the end of the Will in the bottom of the signature there is a correction like 's' found; whereas the signatures at the end of the correction in Clause-7 there is no such correction. This would also create serious doubts about the genuineness of the Will.

47. The testator is aware of his entitlement in the property. He had divested title in the year 1972 to an extent of 32 grounds by way of settlement deed. That being the position, if really he had executed the Will, he would have mentioned the details of the property which is also found missing in the Will. Further the evidence of the 1st defendant would show as if the Will was typed in M/s.Metro General Credits and Investment Limited office typewriter, as the typewriter of the testator was not working at the relevant point of time. In this regard, when the evidence of attesting witness P.W.2 Mr.Terence Shenoy was carefully seen, he has stated in his evidence that he was partner in the M/s. Metro Consultancy Service, a partnership firm which had its office at Metro General Credit Limited. He has also admitted the that the 7th defendant also was a partner for some time in the Metro Consultancy Service and he has also admitted in his evidence that he is also a shareholder at one point of time in the Metro General Credits Limited. It is to be noted that it is the specific evidence of P.W.2 that he was only a shareholder in the Metro General Credit Limited company at one point of time. It is to be noted that it is the specific evidence of P.W.2 that he was only a shareholder, which shows that he is also interested in the Metro General Credit Limited where the money of Dr.L.C.Lobo was deposited. His evidence also goes to show that one M/s. Thomas V.M. & Co is also having its firm in the same office premises. Mr.V.M.Thomas is father the 7th defendant Mr.Davis Thomas and the entire premises was run by Mr.V.M.Thomas. P.W.2 evidence would also show that he has no idea where the Will was typed and he did not know who typed the Will. According to him, Dr.L.C.Lobo took the Will with him. He is also aware of the fact that Mr.Sridharan is Lawyer of Dr.L.C.Lobo and Mrs.Tamil Selvi is working as Stenographer in M/s. Metro General Consultancy. His evidence also clearly shows that he was also made as a trustee in some settlement deeds executed in favour of the defendants. Further his evidence also goes to show that he did not know whether the testator left the Will with Mr.Davis Thomas or any one else. The evidence of P.W.2 makes it clear that he is also partner in M/s Metro Consultancy Services where 7th Defendant was also a partner. Though he claims to be a partner in the M/s.Metro Consultancy Services, it is different from M/s.Metro General Credit and investment Limited. His evidence in fact goes to show that he did not know who has typed the Will and where it was typed and one Mrs.Tamil Selvi has only typed the Will. P.W.2 was admittedly having close nexus with the 7th Defendant. 7th Defendant is also a beneficiary of the Will. All these facts create serious doubt about the genuineness of the Will.

48. It is further to be noted that the plaintiff in the pleadings has stated that the original Will was handed over to him in the month of February 1997. In the reply statement filed by him, it is his specific case that the Will was handed over to him in February 1997. Whereas in the chief examination, it is the evidence of P.W.1 that he received the Will the very next day of the death of the testator i.e.,on 16.01.1997. The evidence of P.W.1 is that he handed over a copy of the Will to the 1st defendant immediately after the demise of the testator for perusal. Whereas the 1st defendant in her evidence has stated that the Will was directly handed over to Mr.Sridharan. It is the specific

evidence of P.W.1 in the chief examination that Mr.David Thomas came to his office and handed over the Will. P.W.2 in his evidence stated that only the testator took the Will and he has no idea about handing over the Will to Mr.David Thomas. But how the Will came to Mr.David Thomas and handed over to D.W.1 remains as a mystery. In the cross examination of P.W.1, he states that he was not aware of the existence of the Will at all. When a question was put to him with regard to Mr.David Thomas, P.W.1 in his evidence has stated that D7 was only the employee in M/s. Metro General Credit Limited. This evidence is totally contrary to the evidence of P.W.2 wherein he has clearly stated that Mr.David Thoams is holding the right in the premises. P.W.2 is also one of the partners in the Metro consultancy services. It is also relevant to note that immediately after the receipt of the alleged Will the plaintiff appears to have sent a letter to the 7th defendant on 19th July 1997 informing him about the alleged Will.

49. It is curious to note that on 29.5.1997 letters were said to have been addressed to the Canara Bank, Thousand lights Branch informing the Will of the deceased requiring the bank to give details of account of the testator. Similarly, letters have been sent to Syndicate Bank, T.Nagar Branch and Indian Bank, Egmore branch on the same day i.e., 29.5.1997. These letters are marked as Ex.P.8, Ex.P.9 and Ex.P.7 respectively. It is curious to note that despite the notices sent to the banks informing about the alleged will, the plaintiff in a letter dated 19.07.1997 to one of the defendants viz., Mrs.Esther Louise Miranda, he never whispered anything about the alleged Will. On the other hand he has requested the defendant to sign certain papers to deposit the amount in respect of the accounts relating to the estate of the grandparents. There was no reason as to why he has not informed the defendants about Ex.P.1 in the above letter dated July 19, 1997, though on the same day he said to have informed the same to the Little Sisters of the Poor, there is no letter or acknowledgement to prove the above letter. It is curious to note that one of the defendants Mrs. Laura Ann Shahani sent a letter dated 4.8.1998 which is marked as Ex.P.12. Though there were several issues discussed about 'H' Lobo's estate and two letters of communication sent by the plaintiff in Ex.P.14 in which also several aspects have been discussed, the fate of the alleged Will dated 26.10.1994 has not been mentioned, despite the fact that communications sent to the banks.

50. It is to be noted that Ex.D.11 assumes significance. Ex.D.11 sent by the plaintiff to one of the defendants wherein he has acknowledged the receipt of the letter dated 7.5.1997 and informed that he will revert in the matter shortly. It is curious to note that on 29.5.1997 he had allegedly informed to the banks about the Wills. But he kept silent about the Will to the defendants. There is no reason as to why he has not informed the defendants on 29.5.1997 itself, when he was able to inform the same to the banks and others. These facts also create some doubts about the genuineness of the Will and whereas for the first time Ex.D.17 letter was sent to Mr. Baldev Sahani husband of one of the defendants much after one year. The plaintiff who was in active confidence all along was in dominant position and he was also aware of previous Wills, when there was a discussion with regard to the previous Wills. If the Will was genuine and by that time already reached his hand, his normal conduct would be to inform the family members about the Will. Keeping the family members away from the Will also creates serious doubt about the Will. The manner in which benefit included for himself in the Will and the plaintiff wants to take advantage of such transaction he must prove the good faith of transaction, the entire burden lies on the plaintiff. Since the plaintiff being the lawyer and who were aware of the entire affairs of the family and he wants to prove any document which confers any benefit on him, the burden of proving the good faith lies on him as per Section 111 of Indian Evidence Act. In view of the above discussion this court cannot come to the conclusion that the Will dated 26.10.1994 is not valid and genuine, as the same is surrounded various suspicious circumstances. Circumstances shrouded in the Will and the manner in which the Will came into existence created serious doubt as to whether the testator executed Will in a sound state of mind. The Issue Nos.1 to 3 are answered accordingly.

Additional Issue No.1 framed on 14.03.2008:

51. On analysing the entire facts, this Court is of the view that the plaintiff has not proved the good faith in this transaction. It is further to be noted that admittedly as per the plaintiff's version Dr.L.C.Lobo was well educated person, he has knowledge in all aspects, that being so, he would not have bequeathed the properties to the charitable purpose contrary to Section 118 of the Indian Succession Act at the relevant point of time.

52. Section 118 of the Indian Succession Act reads as follows:

"Bequest to religious or charitable uses.- No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons."

53. Section 118 of the Indian Succession Act as stood before makes it mandatory, deposit of any such Will within six months from such execution. Further, the Will ought to have been executed not less than 12 months before the death of testator. Dr.L.C.Lobo, according to the plaintiff, is a man of knowledge. If really, he had intended to exclude his nieces and nephews, namely the defendants 2 to 6, he would have followed the mandatory provision under Section 118 scrupulously, whereas, he has not done so.

54. Section 118 of the Indian Succession Act was struck down at a later stage by the Honourable Supreme Court in John Vallamattom and another v. Union of India [AIR 2003 SC 2902]. But making such provision in the Will said to have been executed clearly probalilise the fact that the Will was created after the provisions under Section 118 struck down by using available signature of Dr.L.C.Lobo in an one single paper. It is the normal practice that for preparing urgent applications and affidavit, getting the signature of the client in a blank paper is not alien to the legal profession. The manner in which signature obtained in the right side bottom of the paper and contents have been accommodated in between the signature and the Will was prepared also probalilise the defence theory, that the Will has been created for the benefit cannot be ruled out. At any event the suspicion is inherent in the transaction itself. Therefore, the disposition regarding the bequest to the charitable use at the relevant time i.e., before the above provision was struck down by the Hon'ble Supreme Court is squarely hit by the provisions of Section 118 of the Indian Succession Act. This Issue is answered accordingly.

Additional Issue No.1 framed on 26.03.2008:

55. It is also curious to note that one of the defendants i.e., D6, filed a suit in C.S.No.602 of 2001 against the plaintiff and 7th defendant, for recovery of a sum of Rs.13,94,367/- with interest at 18%, which is marked as Ex.P.20. It is the case where Dr.L.C.Lobo withdrew the monies from the estate of Mrs.Hermione Lobo and invested the same in various deposits of Metro General Credit Limited and on their majority. the amount ought to have deposited or repayable to the estate of Mrs.Hermoine Lobo. In the above suit, plaintiff as executor and the seventh defendant as General Manager of M/s.Metro General Credit Limited have filed written statement. Further, the evidence of P.W.1 clearly show that one Mr.Irwin Aarun is also in his office. One Mr.K.C.Kathirvel is also lawyer and he not even answered many questions put to him. It is also curious to note that one of the attesting witnesses in Ex.D.18 Mr.K.C.Kathirvelu is lawyer by profession was not answered by P.W.1 when question was put to him. His further cross examination also clearly shows that in Will of Mr. Ramsay Unger, Dr.L.C.Lobo was nominated as executor. His evidence further shows that Ms.Gywne, Mr.H.S.Hart and Dr.L.C.Lobo had discussion with the senior with the plaintiff about the Will of Ramsay Unger. At any event, as discussed above, the very transaction itself shrouded with serious doubts. Possibility of taking advantage of the dispute between the testator and nieces nephews in

respect of the grandparents of the defendants projecting the Will, including certain clauses excluding the defendants who are the real beneficiaries by the executors cannot be ruled out.

56. 7th defendant not examined in the suit and the Will has been handed over to the 1st defendant by the plaintiff whereas 1st defendant has taken a contrary stand to the effect that the Will is directly handed over to Mr.Sridharan Plaintiff. All these facts indicate serious doubt about the Will has been reached to the executors.

57. The plaintiff and 7th defendant were appointed as executors. They act jointly and severally. Thought it is prerogative of the testator to appoint such executor. It is to be noted that the purpose of appointing of executors is for the execution of the last Will of the deceased person. The executor of the deceased persons are legal representatives for all the purposes in all the properties of the deceased person. Therefore, the executors considered as legal representatives for all the purposes. I am of the view that both the executors should act jointly for the purpose of carrying out the intention of the testator. If each executors act separately, the purpose of their appointment will be defeated. Whereas in the Will executors were appointed jointly and severally. This aspect also indicates one of the circumstances which leaves a doubt about the genuineness of the Will. Though the testator is not prohibited from appointing the executor under the Act jointly or severally , the purpose of appointing the executor is for the execution of the last Will of the testator. If each of the executors act independently against other executors the very purpose of the Will will be defeated. Accordingly, I am of the view that giving such powers to each of the executors in the Will itself creates a doubt about the genuineness of the Will. It is to be noted that though proper importance be given to the executors simultaneously or later, the conduct of the one of the executors viz., 7th defendant also assumes significance in this case. He has not filed written statement till the 1st defendant was examined nor entered into box and only answered through interrogatories. And further he has supported the case of the another executor. These facts also probabilise the defence theory that both the executors have helped for creating Will. Accordingly, this issue is answered.

Additional Issue No.2 framed on 26.03.2008:

58. Since the very existence of the Will itself is not proved, no discussion is necessary in respect of this issue. However, for academic interest, when carefully seen, in the Will, a life interest to the first defendant was given, thereafter, to the seventh defendant and his wife and after that, 8th defendant's charity. I am of the view that this is not hit by rule of perpetuity since both the 7th defendant and his wife were existing at the time of Will. Accordingly this issue is answered.

N. SATHISH KUMAR, J.

ggs.

59. In the result the Testamentary Original Suit No.49 of 2001 is dismissed with costs.

06.09.2018

Index:Yes/No

Internet:Yes/No

ggs.

Judgment in:

T.O.S.No.49 of 2001