

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2019

PRONOUNCED ON : 08.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.237 of 2006
and
C.M.P.No.3566 of 2006

Lalitha ...Appellant/Appellant/
2nd Defendant

Vs.

1.Mohana Sundari ... 1st Respondent/
1st Respondent/Plaintiff

2.The Revenue Divisional Officer,
Thiruvallur. ... 2nd Respondent/2nd Respondent/
3rd Defendant

3.Krishna Bai @ Thara Bai (Deceased)
... 3rd Respondent/3rd Respondent/
1st Defendant

4.L.Jothilingam

5.L.Mohana Sundaram @ Mohan

6.T.S.Vijayalaxmi

7.L.Prakash

[RR4 to R7 brought on record as
LRs of the deceased R3 vide order
of Court dated 13.08.2014 made in
M.P.Nos.1 to 3 of 2014 in
S.A.No.237 of 2006]

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... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 09.12.2004 made in A.S.No.7 of 2000 on the file of the Additional District Judge, Fast Track Court No.V, Chengalput at Thiruvallur which confirmed the judgment and decree dated 30.11.1999 made in O.S.No.534 of 1993 on the file of the District Munsif, Tiruvallur.

For Appellant : M/s.T.Jayalakshmi
For M/s.Paul and Paul
For RR1 : Mr.R.Gunasekaran
For RR2 : Mr.Sricharan Rangarajan
Spl GP (CS)
For RR4 to R7 : Mr.M.Ranganathan

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 09.12.2000 passed in A.S.No.7 of 2000 on the file of the Additional District Judge/Fast Track Court No.II, Chengalpat, confirming the judgment and decree dated 30.11.1999 passed in O.S.No.534 of 1993 on the file of the District Munsif Court, Thiruvallur.

2. The second appeal has been admitted on the following substantial questions of law.

(i) Whether the first appellate judge was legally correct in relying on the patta Ex.A3 to hold in favour of the first respondent in spite of Ex.A24 and A25 wherein the said patta was canceled by the competent authority and the same ordered to be transferred in favour of the appellant?

(ii) Whether the Courts below were right in law in placing the onus on the appellant to prove the suspicious circumstances surrounding the execution of the Will without appreciating that the initial onus to dispel the suspicious circumstances found arising from the document and the contents is on the propounder of the Will?

(iii) Whether the first appellate judge was right in law in holding that possession was with the first respondent herein on the ground that the appellant had not filed any adangal and the appellant had not examined the tenants over looking the fact that the first respondent who is the plaintiff had himself not filed any adangal or examined the tenants?

(iv) Whether the first appellate judge was right in law in not dealing with the major differences between Ex.B1 registered Will in favour of the appellant and Ex.A1 the subsequent unregistered Will in favour of the first respondent which clearly give rise to suspicion in spite of the same being pointed out by the appellant?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The plaintiff has levied the suit against the defendants for the reliefs of declaration and permanent injunction.

6. The plaintiff claims title to the suit properties based on the Will dated 06.06.1987 marked as Ex.A1. Per contra, the defendants 1 and 2 claim title to the suit properties based on the Will dated 23.10.1986 marked as Ex.B1. At this juncture, it is to be noted that Ex.B1 Will is a registered Will whereas, Ex.A1 Will is not a registered one. Be that as it may, both the Wills had been executed by Chandra Bai. That the suit properties belonged to Chandra Bai is not in dispute. The plaintiff is the granddaughter of Chandra Bai born through her son Sundaramurthy. The defendants 1 and 2 are the daughters of Chandra Bai. When it is seen that the suit properties originally belonged to Chandra Bai, it is found that Chandra Bai would be entitled to bequeath the suit properties in favour of others as she desires. It is further noted that the suit properties had been acquired by Chandra Bai and her sister through their mother and on her sister conveying her share in the properties to Chandra Bai by way of a sale deed dated 11.12.1962 marked as Ex.B2, it is seen that Chandra Bai had acquired full title to the suit properties and as abovenoted, that the suit properties belong to Chandra Bai is not in dispute between the parties.

7. Ex.B1 Will is dated 23.10.1986, therefore it is found that Chandra Bai had bequeathed the suit properties in favour of her daughters namely the defendants 1 and 2 by way of Ex.B1 Will at the first instance and thereafter, according to the plaintiff, she had chosen to bequeath the suit properties in her favour by way of the Will marked as Ex.A1 on 06.06.1987. The plaintiff having come forward with the reliefs sought for in

the suit based on Ex.A1 Will and particularly when the defendants 1 and 2 have thrown a stiff challenge to the truth and validity of Ex.A1 Will and when according to the defendants 1 and 2, the abovesaid Will has not been executed by Chandra Bai in a fit state of mind and further according to them, when Chandra Bai had no intention to bequeath the suit properties in favour of the plaintiff at any point of time and further contended that Ex.A1 Will has not seen the light of the day and also circumscribed by various suspicious circumstances as detailed in the written statement, according to the defendants 1 and 2, the plaintiff had fabricated Ex.A1 Will for falsely claiming title to the suit properties and accordingly put forth the case that the plaintiff is not entitled to seek and obtain the reliefs as prayed for in the suit on the basis of the concocted Will Ex.A1.

8. Inasmuch as Ex.A1 Will is being propounded by the plaintiff as abovenoted, when the same is being stiffly challenged by the defendants 1 and 2, the onus is heavy upon the plaintiff to establish the truth and validity of the abovesaid Will and furthermore, the plaintiff should also establish that the abovesaid Will is not beset with any suspicious circumstances as projected by the defendants 1 and 2 and that the abovesaid Will had been executed in her favour by Chandra Bai on her own volition and in a fit state of mind and that pursuant to the abovesaid Will, she has been in the possession and enjoyment of the suit properties and not the defendants 1 and 2 and thereby entitled to obtain the reliefs prayed for.

9. As abovenoted, the plaintiff claims the reliefs prayed for in the suit based on the Will dated 06.06.1987 marked as Ex.A1. However, on a perusal of the original plaint filed by the plaintiff, it is seen that the plaintiff has not whispered anything about as to when the Will had been executed in her favour by Chandra Bai in respect of the suit properties. She had only averred that Chandra Bai had executed the Will in the year 1987 in her favour bequeathing the suit properties. In addition to that, neither the Will nor the copy of the Will has been enclosed along with the plaint by the plaintiff. Thus, it is noted that the main document on the basis of which the plaintiff has claimed title to the suit properties i.e., the Will dated 06.06.1987 has not been referred to in specific in the body of the plaint nor the said document been filed along with the plaint. The plaintiff has laid the suit on 11.09.1993 and only much latter, by way of an amendment application in I.A.No.532 of 1996 as per the order passed therein dated 19.04.1996, it is seen that the plaintiff has chosen to amend the plaint giving the date of the Will as 06.06.1987. Therefore, till the date of the filing of the abovesaid

interlocutory application, the plaintiff has not come forward with the specific case that Chandra Bai had executed the Will in her favour on 06.06.1987. As rightly put forth by the defendants' counsel, if really the Will had been executed in favour of the plaintiff on 06.06.1987 and based upon the same, if really the plaintiff had been in the possession and enjoyment of the suit properties on the demise of Chandra Bai, it is seen that the plaintiff would have come forward with the specific case in the plaint that the Will in her favour had been executed by Chandra Bai on 06.06.1987 and also would have endeavored to produce the Will along with the plaint or at least the copy of the same in support of her case. However, nearly 2 ½ or 3 years after the institution of the suit only, by way of the abovesaid interlocutory application, the plaintiff has put forth the case that the Will had come to be executed in her favour by Chandra Bai on 06.06.1987. As to why the plaintiff had not come forward with the clear date of the execution of the Will and as to why the plaintiff had not produced the copy of the Will along with the plaint, there is no proper explanation with reference to the same on the part of the plaintiff. No doubt, the amendment carried out in the plaint with reference to the furnishing of the date of the Will, would date back to the time of the institution of the suit, but the abovesaid factors cannot be easily discarded and as rightly pointed out by the defendants' counsel, inasmuch as the plaintiff herself is not sure as to when the alleged Will had come to be executed in her favour by Chandra Bai in respect of the suit properties, it is seen that very belatedly she had chosen to mention the date of the Will in the plaint by way of the amendment application that the abovesaid Will is dated 06.06.1987. Therefore, the abovesaid suspicious circumstances projected by the defendants as regards the truth of the Will in question projected by the plaintiff cannot be easily ruled out and as regards the same, it has to be held that the plaintiff has not come forward with the clear and specific case and also furnished plausible reasons.

10. As abovenoted, according to the defendants 1 and 2, Chandra Bai had already executed a registered Will in their favour on 23.10.1986 in respect of the suit properties and the abovesaid Will has been marked as Ex.B1. From the evidence adduced by the respective parties, it is seen that following the death of Chandra Bai on 06.10.1988, Ex.B1 Will had come into force and accordingly, it is found that the defendants 1 and 2 had approached the Revenue authorities for mutation of the suit properties in their favour based on Ex.B1 Will and it is seen that the patta had been issued in favour of the defendants 1 and 2 in respect of the suit properties, which documents have come to be marked as Exs.B3 and B4. To evidence that the suit properties had been in their possession and enjoyment, the defendants had also marked the Kist receipts marked as Exs.B5

to B8. Further, to show that the lessees in the occupation of the suit properties had agreed to pay the lease in their favour, the Muchallika executed by the lessees in their favour had come to be marked as Exs.B9 to B12. It is thus found that inasmuch as Ex.B1 Will had come into force on the demise of Chandra Bai, exercising their ownership over the suit properties, the defendants 1 and 2 had secured patta from the Revenue authorities and following the same, had been enjoying the suit properties by paying Kists and collecting the lease from the lessees of the suit properties and the abovesaid documents cannot be easily brushed aside.

11. In this connection, the plaintiff examined as P.W.1, during the course of cross examination has admitted that the patta in respect of the suit properties originally stood in the name of Chandra Bai and during 1989, the defendants 1 and 2 had changed the patta in their names and according to the plaintiff as well as her father examined as P.W.4 based on Ex.A1 Will, they had moved the Revenue authorities to effect the patta in the name of the plaintiff in respect of the suit properties and thus it is found that at the first instance, the patta had been issued only in favour of the defendants 1 and 2 based on the Will marked as Ex.B1. Materials placed on record go to show that on the initiation of the plaintiff, the Revenue Authority had chosen to convert the patta in the name of the original title holder namely Chandra Bai, thereafter, at the next instance of the plaintiff, had directed the change of patta in the name of the plaintiff. Challenging the same, it is found that the defendants had preferred the appeal before the Sub-Collector, Thiruvalur and the abovesaid Revenue Authority on the basis of the materials placed on record by the respective parties and the submissions made, ordered the transfer of patta in favour of the defendants 1 and 2 in respect of the suit properties canceling the orders of patta made earlier in the names of Chandra Bai and thereafter, the plaintiff and accordingly allowed the appeal preferred by the defendants 1 and 2, which could be gathered from the proceedings of the Sub-Collector marked as Ex.A25. It is also seen that the abovesaid order has also been sent to the plaintiff intimating her that she would be entitled to prefer the appeal before the District Revenue Officer with reference to the same within a particular period of time. As regards the abovesaid position, the plaintiff during the course of cross examination as well as her father P.W.4, during the course of his evidence has admitted that as against the change of patta in the name of the original title holder Chandra Bai from the names of the defendants 1 and 2 and thereafter the plaintiff mutating her name in the patta document, the defendants had preferred the appeal and also admitted that they had entered appearance in the abovesaid proceedings before the Sub Collector and accordingly, it is found that subsequently the Sub Collector has

passed the order marked as Ex.A25, ordering the transfer of patta in favour of the defendants 1 and 2 and furthermore the plaintiff has admitted that she had not been directly engaged in the cultivation of the suit properties and leased out the same, however, there is no valid and acceptable materials projected on the part of the plaintiff that she had been collecting the lease from the alleged lessees of the suit properties and the position being above, in such view of the matter, the documents of patta projected by the plaintiff marked as Exs.A2 and A3 and the Kist receipts in favour of the plaintiff marked as Exs.A4 and A5 would be of no use to sustain the plaintiff's case to safely conclude that she had been in the valid possession and enjoyment of the suit properties as put forth by her. Similarly, the documents marked as Exs.A7 and A9, the letter addressed by one Shesaiya Naidu to Chandra Bai also would be no use to sustain the plaintiff's case that she had been in the valid possession and enjoyment of the suit properties pursuant to Ex.A1 Will. Thus, it is seen that absolutely there is no acceptable and reliable document projected by the plaintiff to hold safely that she had been in the possession and enjoyment of the suit properties by obtaining patta, paying Kists etc., when particularly it is noted that the patta which had been issued in her favour had been canceled by the Sub Collector vide the proceedings marked as Ex.A25 and thereafter and even prior to the same, when there is no valid material to show that the plaintiff had been in possession and enjoyment of the suit properties and when it is not the case of the plaintiff that she had been directly engaged in the cultivation of the suit properties and on the other hand when from the abovesaid documents, it is seen that it is only the defendants, who are in possession and enjoyment of the suit properties, the determination of the Courts below that the plaintiff had established the truth and validity of Ex.A1 Will based on her possession and enjoyment of the suit properties following the same, as such cannot be accepted and countenanced in any manner.

12. As abovenoted, the defendants have thrown a stiff challenge to the truth and validity of Ex.A1 Will. In such view of the matter, the plaintiff bring the propounder, should establish the authenticity of the same. At the foremost, the plaintiff has not come forward with the clear case as to why Chandra Bai had chosen to bequeath the suit properties in her favour, she being only one of the granddaughters born through one of her sons namely Sundaramurthy. Materials placed on record go to show that Chandra Bai had four sons and two daughters. The daughters are the defendants 1 and 2. In such view of the matter, the plaintiff should have come forward with the specific case as to why Chandra Bai had chosen to disinherit her other heirs particularly the other three sons and chosen to

bequeath the suit properties in favour of the plaintiff born to her son Sundaramurthy. With reference to the same, the plaintiff would come forward with the case that inasmuch as Chandra Bai had been living with her father during her last days till her demise, she had chosen to bequeath the suit properties in her favour and on that basis urged the Court to uphold the truth and validity of the abovesaid Will. However, there is no reliable material placed on the part of the plaintiff worth acceptance to hold that Chandra Bai had been living with plaintiff's father during her last days and not been cared and looked after by the other sons as sought to be projected by her. With reference to the abovesaid case of the plaintiff, the plaintiff had chosen to rely upon the document marked as Exs.A10 to A16. However, as rightly put forth by the defendants' counsel, the abovesaid documents would be of no use to hold that Chandra Bai had been living exclusively with the plaintiff's father during her last days and thereby Chandra Bai had chosen to bequeath the suit properties in favour of the plaintiff, she being the daughter of Sundara Murthy. On a perusal of the abovesaid documents, those documents are found to be letters written by certain medical practitioners addressed to their friends/other medical practitioners informing that Sundaramurthy is known to them and accordingly recommending that his mother Chandra Bai be given personal attention in connection with the illness, she had been suffering from and one of the documents, Ex.A12 is found to be the O.P sheet issued in favour of Chandra Bai. In the light of the above position, when it is seen that Sundaramurthy had also been working as a medical representative at that point of time, when the abovesaid documents marked as Exs.A10 to 15 do not show any indication that Chandra Bai had been living with her son Sundaramurthy alone and not been attended by her other sons and daughters, in such view of the matter, the Courts below seem to have fallen into error in holding that Chandra Bai had been living with Sundaramurthy during her last days till her demise, based on the abovesaid documents marked as Exs.A10 to A15. It is not the case of the plaintiff that the other sons of Chandra Bai had not shown any interest in looking after or providing her needs and had been ignoring her completely. Furthermore, it is not the case of the plaintiff that there is no love lasting between Chandra Bai and her other sons or daughters and accordingly she had chosen to bequeath the suit properties in her favour. The obituary card of Chandra Bai has been marked as Ex.A16. It reads as if the last rites of Chandra Bai had been performed by Sundaramurthy, at his residence. However, Sundaramurthy examined as P.W.4, during the course of cross examination, has clearly admitted that the last rites of his mother had been jointly performed by him and his brothers and the same had been conducted at his brother Krishna Raj's residence at Meenambakkam, as he was eldest in the family. Therefore, when it is seen that there is

no love lost between Chandra Bai and her other sons or daughters and accordingly her last rites had been performed by her all sons together at the residence of the eldest son Krishna Raj., to say that Chandra Bai had been only looked after by Sundaramurthy during her last days and had not been looked after by her other sons or daughters or had been ignored by her other sons and daughters and when it is not the case of the plaintiff that there has been no love and affection between Chandra Bai and other sons and daughters, in such view of the matter, the determination of the Courts below that Chandra Bai had been living with her son Sundaramurthy only till her last days, till her demise and the same had been established by the plaintiff based on Exs.A1 to A16 as such, does not merit acceptance in any manner. Particularly when there is nothing in the abovesaid documents to indicate the same and as above discussed, when it is seen that Chandra Bai had not been ignored by her other sons/daughters and there is no love lost between her and her other sons /daughters. In such view of the matter, the case projected by the plaintiff that Chandra Bai had chosen to bequeath the suit properties in her favour on account of she having been looked after by her son Sundaramurthy during her last days, as such, cannot be accepted and believed in any manner. If that be the position, the necessary recitals with reference to the same would have been incorporated by Chandra Bai in the Will marked as Ex.A1. In this connection, P.W.4, the plaintiff's father during the course of his evidence has admitted that there is no reason found in Ex.A1 Will as to why her mother had chosen to bequeath the suit properties in favour of her daughter solely excluding her other grandsons and granddaughters. On a perusal of Ex.A1 Will, it is seen that nothing has been mentioned therein as to why the testatrix Chandra Bai had chosen to bequeath the suit properties as well as the jewels mentioned therein in entirety, in favour of the plaintiff excluding her other sons / daughters, grandsons and granddaughters born through her other sons / her daughters. Therefore, when nothing has been projected by the plaintiff and also not established by the plaintiff as to why Chandra Bai had chosen to disinherit the other legal heirs or the children born to her other legal heirs and had given the suit properties plus jewels in favour of the plaintiff, the abovesaid factor also throws a strong suspicion against the genuineness and validity of Ex.A1 Will.

13. The abovesaid factors had not been rightly and properly assessed and determined by the Courts below, on the basis of the materials placed on record, as above pointed out and discussed. On a perusal of Ex.A1 Will , it is found to be written on a sheet of paper torn out from the 40 pages notebook. But on a careful perusal of the same, it is found that the contents thereon had been written in an abnormal manner particularly the

manner in which the contents had been written in the last six lines in the abovesaid Will and the same had been written in a cramped manner. As rightly pointed by the defendants' counsel, to adjust the space available in the paper and when the other contents of the Will had been written leaving suitable space in between the lines, it is not been established by the plaintiff as to why the last six lines had been written continuously and closely without leaving space in a cramped manner. The abovesaid factor also casts a serious suspicion as regards the truth and validity of the Will Ex.A1.

14. Furthermore, one Rajammal, the scribe, who is stated to have written the Will Ex.A1 as per the instructions of Chandra Bai, has not been examined. No doubt, the Will need not be proved as per law by examining the scribe, and it is sufficient if the attestors of the Will are examined for establishing the truth and validity of the Will. Be that as it may, when with reference to the abovesaid abnormal writing of the contents of the Will Ex.A1, the last six lines being written closely without leaving space in a cramped manner, not being properly explained, it is for the scribe to explain as to why the same had been written in the above fashion in the said document. The attestors of Ex.A1 Will examined as P.W.2 and 3 had not stated anything about the same during the course of their evidence. In such view of the matter, the plaintiff being the propounder, should have come forward to examine the scribe of the Will Rajammal to explain the abovesaid abnormal features surrounding the Will so as to dispel the suspicion pointing to the same. On a perusal of the Will Ex.A1, it is found that after the writing the contents in the abovesaid fashion and after writing the properties to be bequeathed one way or the other, immediately thereafter the scribe has put her signature intimating that she had written the Will by giving her address. Thereafter, the signature of the testatrix Chandra Bai is found to have been obtained in the said Will. Accordingly, pointing to the same, it is contended by the defendants' counsel that there is no explanation on the part of the plaintiff as to how come the scribe Rajammal had chosen to put her signature in the Will even before the the testatrix had signed in the said document and to explain the abovesaid position also, the plaintiff had not chosen to examine the scribe to establish the abovesaid abnormal feature pertaining to the same. The attestors examined as P.Ws 2 and 3 had not given any reason or spoken to anything as to why the scribe had put her signature in the said document even before the testatrix had affixed her signature in the said document.

15. In addition to that, below the signature of the testatrix Chandra Bai, one LTI is found in the Will Ex.A1. There is nothing on the said record pointing as to whose LTI

the same relates to. Furthermore, even the plaintiff has not averred in the plaint or deposed anything during the course of her evidence that Chandra Bai in addition to affixing her signature in the Will also put her LTI in the same. If that be so, if Chandra Bai had also put her LTI in the Will Ex.A1, the scribe would have made a note of the same informing that the same is the LTI of Chandra Bai. However, other than the LTI found in the document, the document does not point out as to whose LTI it pertains to and when the plaintiff has also not come forward with the specific case that Chandra Bai had affixed her LTI in the abovesaid document and further the attestors of the document namely P.Ws2 and 3 have also not come forward to state that Chandra Bai had also affixed her LTI in the Will Ex.A1, on the other hand, their evidence would only go to show that Chandra Bai had signed the abovesaid Will Ex.A1, in such view of the matter, to explain as to from whom the abovesaid LTI found in Ex.A1 Will had been secured, whether it pertains to Chandra Bai or any other person as to why there is no indication made that it pertains to Chandra Bai etc., the plaintiff should have endeavored to examine the scribe to clear the doubts surrounding the same one way or the other and despite the abovesaid position, the plaintiff has not chosen to examine the scribe in support of her case, particularly, to clear the abovesaid suspicious circumstances surrounding the Will.

16. It is the case of the plaintiff that the abovesaid Will Ex.A1 had been executed in her favour by Chandra Bai on her birthday. According to the plaintiff, when her birthday had been celebrated in her residence along with her friends and well wishers on 06.06.1987, Chandra Bai had chosen to bequeath the suit properties in her favour and accordingly executed the Will Ex.A1 in her favour bequeathing the suit properties and the jewels described therein in her favour. As abovenoted, Chandra Bai had already bequeathed the suit properties, in particular, in favour of her daughters namely the defendants 1 and 2 by way of Ex.B1 Will and both the Courts below had concurrently held that Ex.B1 Will had been established to be a true and valid Will executed by Chandra Bai in favour of the defendants 1 and 2 and thus it is evident that Chandra Bai had bequeathed the suit properties only in favour of the defendants 1 and 2 at the first instance. That Chandra Bai had subsequently executed Ex.A1 Will in favour of the plaintiff bequeathing the suit properties on the determination that the subsequent Will of the testatrix would prevail upon the earlier Will, accordingly, on that reasonings holding that by way of Ex.A1 Will Chandra Bai had revoked or rescinded her Ex.B1 Will, accordingly the courts below had proceeded to grant the reliefs in favour of the plaintiff based upon Ex.A1 Will. The position however being, is that at the first instance, Chandra Bai had chosen to bequeath the suit properties in favour of the defendants 1 and 2. On a

perusal of Ex.B1 Will , it is found that Chandra Bai had given out or spellt out clear reasons as to why she had chosen to bequeath the suit properties in favour of her daughters namely the defendants 1 and 2 as per the recitals contained in Ex.B1 Will. According to Chandra Bai inasmuch as, her sons had been given the properties of her husband Kanniyappan and inasmuch as her daughters had not been provided with any properties accordingly, it has been averred by her, that she had chosen to bequeath the suit properties derived through her mother as well as by way of purchase from her sister, in favour of daughters to be enjoyed by them absolutely and accordingly clearly describing the suit properties in detail by giving the survey numbers, extents, the location of the same, the nature of the soil etc., When it is seen that Chandra Bai had chosen to bequeath the suit properties in favour of her daughters by way of Ex.B1 Will and as above pointed out, Ex.B1 Will had been established to be a true and valid document by the defendants 1 and 2 by examining the attestors as D.Ws2 and 3 and furthermore as above noted, Ex.B1 Will had been registered on the same date and all these factors would go to show that in a clear manner that Chandra Bai had already bequeathed the suit properties in favour of her daughters, the defendants 1 and 2 as above noted. In the light of the abovesaid factors, on the demise of Chandra Bai , the defendants 1 and 2 had also chosen to inherit the suit properties and accordingly mutate their names in the revenue register effecting patta in their favour and enjoying the suit properties by paying Kists and receiving lease etc., from the Paguthithaarars. Despite the abvoesaid factors, the case of the plaintiff that Chandra Bai had thereafter chosen to bequeath the suit properties in her favour exclusively, particularly without mentioning in Ex.A1 Will, the reason as to why she had chosen to bequeath the suit properties in favour of the plaintiff alone excluding the other legal heirs, in such view of the matter and the case of the plaintiff that she had chosen to bequeath the suit properties in her favour on account of the factor that she had been residing with her father till her demise, however, when the said case of the plaintiff is being seriously challenged by the defendants and with reference to the same, there is no acceptable and reliable material forthcoming on the part of the plaintiff and when Exs.A10 to A16 do not shed any light to the same as above pointed out and discussed, it is seen that there is no proper and valid explanation on the part of the plaintiff as to why the testatrix Chandra Bai had decided to bequeath the suit properties solely in her favour.

17. As above noted, according to the plaintiff Ex.A1 Will had come to be executed in her favour by Chandra Bai on her birthday as a birthday gift. Furthermore, according to the plaintiff at that point of time, Chandra Bai was in a fit state

of mind and health and on her own volition executed Ex.A1 Will in her favour. If really Chandra Bai had any intention to convey the suit properties in favour of the plaintiff, even though Chandra Bai would be entitled to bequeath the suit properties in favour of the plaintiff by revoking the Ex.B1 Will, when according to the plaintiff Chandra Bai was in a fit state of mind and health on the date of Ex.A1 Will., if really she had the intention to convey the suit properties in favour of the plaintiff, nothing would have prevented the testatrix Chandra Bai to convey the suit properties in favour of the plaintiff by clearly describing the suit properties with survey numbers, extents etc., as mentioned by her in Ex.B1 Will. On the other hand, on a perusal of Ex.A1 Will, it is seen that as regards the description of the suit properties, it is only mentioned as her all lands at Ekkadu village and nothing more than that. No doubt, other than the suit properties Chandra Bai has no other properties in the suit village. Be that as it may, if really Chandra Bai had the intention to convey the suit properties in favour of the plaintiff in a fit state of mind and health, nothing prevented her from describing the suit properties in detail as done by her, while executing the Ex.B1 Will in favour of her daughters namely the defendants 1 and 2 and as to why Chandra Bai had not chosen to describe the suit properties in detail in Ex.A1 Will, there is no proper explanation on the part of the plaintiff. Though the attestors P.Ws.2 and 3 would claim that Chandra Bai on herself dictated the contents of the Will, however they had not stated anything about Chandra Bai having the custody of any document at the time of the execution of Ex.A1 Will. Per contra, the plaintiff during the course of her evidence has deposed that she had seen the title documents of her grandmother Chandra Bai in respect of the suit properties on her birthday i.e., on 06.06.1987 and according to the plaintiff, Chandra Bai had shown the documents to her as she had conveyed the suit properties in her favour by way of Ex.A1 Will. Furthermore, according to the plaintiff, the abovesaid title documents had also been shown by Chandra Bai to the attestors P.Ws.2 and 3, however P.Ws.2 and 3 had not spoken anything during the course of their evidence that Chandra Bai had shown the title documents to them in respect of the suit properties. Furthermore, as per the case of the plaintiff, the title documents of Chandra Bai had been entrusted to her father by testatrix and thus it is putforth by the plaintiff that Chandra Bai was having the custody of the documents at the time of the execution of Ex.A1 Will in her favour. If that be so, if really Chandra Bai had the intention to convey the suit properties in favour of the plaintiff and if Chandra Bai had the custody of the documents in her possession and if Chandra Bai had been in a fit state of mind at the time of execution of Ex.A1 Will, nothing prevented Chandra Bai from describing the suit properties in detail as mentioned by her in Ex.B1 Will. On

the other hand, it is found that very very indistinctly and vaguely she had described the suit properties as being located in Ekkadu village and nothing more than that. However, on the footing that inasmuch as Chandra Bai owned only the suit properties at Ekkadu village, the Courts below had chosen to brush aside the abovesaid suspicion found in Ex.A1 Will and thereby upheld the plaintiff's case. However, the Courts below had failed to note the surroundings and circumstances as above pointed out, particularly as to why Chandra Bai had not chosen to describe the suit properties in detail despite, as alleged by the plaintiff, she was having the custody of the documents and entrusted the custody of the documents to the plaintiff's father Sundaramurthy.

18. If really, Chandra Bai had bequeathed the suit properties in favour of the plaintiff by way of Ex.A1 Will and had also entrusted the title documents pertaining to the same to the plaintiff's father at the time of execution of Ex.A1 will or subsequent thereto, to sustain her case, the plaintiff would have endeavoured to produce the same in support of her case. On the other hand, the title deed of the suit properties has been produced only by the defendants as Ex.B2. With reference to the same, according to the plaintiff, the documents entrusted to them by Chandra Bai had been lost and accordingly, she had been unable to produce the same in support of her case. On the same lines, her father had also tendered evidence. However neither the plaintiff nor her father has detailed as to what further steps had been taken by them to retrieve the lost documents said to have been entrusted to them by the testatrix Chandra Bai. Other than, faintly stating that the title documents given to them by Chandra Bai had been lost and on the other hand, when the same had come to be produced and marked by the defendants as Ex.B2 and when neither the plaintiff nor her father had chosen to take any legal action with reference to the missing of the alleged documents said to have been entrusted to them by Chandra Bai, all facts put together, would only go to show that inasmuch as, no document had been entrusted to either the plaintiff or her father by Chandra Bai and Chandra Bai was also not having the custody of the said document at that time of the execution of Ex.A1 Will and accordingly unable to describe the suit properties in clear terms in Ex.A1 Will, however in order to lend a true colour to Ex.A1 Will, one way or the other, it is found that the plaintiff has come forward with the false case as if Chandra Bai was having custody of the title documents at the time of Ex.A1 Will and entrusted the same to her father's custody, however the same had been lost subsequently and therefore they were unable to produce the same. However, when with reference to the abovesaid case of the plaintiff, absolutely there is no acceptable and reliable evidence and also no follow up action as per law to retrieve the documents one way or the other and when the attestors P.Ws2 and 3 had not spoken

anything about the documents in the possession of the testatrix Chandra Bai at the relevant point of time, in all, it is seen that the abovesaid feature also throws a strong suspicion in the truth and genuineness of Ex.A1 Will.

19. To prove the truth and validity of Ex.A1 Will, the plaintiff had chosen to produce the passbook of Chandra Bai of the Indian Overseas Bank, where her specimen signature had been obtained in the year 1972, which document had come to be marked as Ex.A26. The trial court is found to have compared the abovesaid signature in the above Ex.A26 with the signature of Chandra Bai available in Ex.A1 and noting that though there are certain discrepancies in the abovesaid signatures, however, explaining the same that the same is bound to occur due to the passage of time and further holding that on certain aspects, the two signatures tally, on that determination, proceeded to uphold the truth and validity of Ex.A1 Will. As rightly contended by the defendants' counsel, the abovesaid approach of the trial court as well as upheld by the first appellate court, seems to be totally unacceptable and not in accordance with law. The Court is not left powerless to compare the disputed signature with the admitted signature. However, while the Court is endeavouring to compare on its own as such the court should take all proper steps to compare the disputed signatures with the admitted signatures of the executant found in a contemporaneous document. On the other hand, the endeavour of the trial court to compare the disputed signature of Chandra Bai with her signature given to the Bank in the year 1972, it is seen that the comparison is not made on a set of contemporaneous documents and in such view of the matter, on the abovesaid comparison, the determination of the trial court as well as the first appellate court that on the said factor also plaintiff has established the truth and validity of Ex.A1 Will as such cannot be accepted in any manner. When, even according to the trial court, the two signatures are found to be not similar in certain aspects, the trial court should not have proceeded further in placing reliance upon the said comparison and despite the same, ignoring the position of law that the Court should be hesitant to compare the disputed signature with the admitted signature as pointed out in the various authorities, particularly the comparison should be carried only on the basis of the signatures available in the contemporaneous document by the Courts below, the abovesaid exercise adopted by the Courts below is found to be not legally sustainable and has to be set aside.

20. It is seen that, the Courts below had upheld the plaintiff's case based on the evidence of the attestors P.Ws.2 and 3. According to P.Ws.2 and 3, they had also attended the birthday function of the plaintiff on 06.06.1987 and accordingly at the instance of Chandra Bai, they had affixed

their signatures in the Will Ex.A1. The attesor P.W.2 Sweegaran is found to be a close friend of the plaintiff's father Sundaramurthy. The attesor Parthasarathy is found to be related to plaintiff's father Sundaramurthy. From the evidence of the attesor Parathasarathy examined as P.W.3, it is found that he has not come forward to attest the said document apprehending that trouble would erupt with reference to the same. The same has been admitted by the said witness during the course of cross examination deposing that he had informed Chandra Bai that trouble would erupt if the said document be executed, however he would state that Chandra Bai had insisted him to sign the document and accordingly he had affixed the signature. Thus, it is seen that knowing the consequences of Ex.A1 Will, the attesor P.W.3 had also advised Chandra Bai about all the future problems that may occur as regards the said document and according to him, despite the same, Chandra Bai had proceeded to execute the Will in favour of the plaintiff. It is thus found that inasmuch as the parties are well aware that Chandra Bai had already executed Ex.B1 Will in favour of her daughters bequeathing the suit properties in their favour, accordingly, one of the attestors apprehended the problems regarding the execution of Ex.A1 Will in respect of the same properties and accordingly also chosen to advise Chandra Bai with reference to the same. But it is seen that Chandra Bai according to the witness, had chosen to execute the Will Ex.A1 in favour of the plaintiff. The Will Ex.A1 is dated 06.06.1987 and much earlier to the same Chandra Bai had executed Ex.B1 Will in favour of her daughters bequeathing the suit properties. Now according to the plaintiff, at the time of execution of Ex.A1 Will, Chandra Bai was in a fit state of mind and in a good health condition. If really, Chandra Bai had the intention to cancel the Will executed in favour of her daughters marked as Ex.B1 Will, there would have been a clear recital in Ex.A1 Will that Will dated 23.10.1986 in favour of the daughters marked as Ex.B1 had been thereby revoked. On the other hand, the only recital contained in Ex.A1 is that the earlier Will executed in respect of the suit properties as well as the jewels thereby stands revoked. As abovenoted, following Ex.B1 Will, the defendants 1 and 2 had taken the possession and enjoyment of the suit properties and enjoying the same as the absolute owners following the demise of Chandra Bai. Only at the instance of the plaintiff, the patta had come to be changed in favour of the plaintiff and subsequent thereto, the patta had been again restored in favour of the defendants. During the pendency of the proceedings before the Sub Collector, Thiruvallur, it is admitted by the plaintiff that she has come forward with the present suit claiming title to the suit properties based on Ex.A1 Will. Chandra Bai died on 06.10.1988, nearly one year after the execution of Ex.A1 Will. If really Chandra Bai had executed Ex.A1 Will on her own volition and in a fit state of

mind and health and intended to revoke Ex.B1 Will and with reference to the same and thereby bequeathed the suit properties in favour of the plaintiff with the intention of enabling the plaintiff to enjoy the suit properties absolutely on her demise, as rightly putforth, nothing prevented Chandra Bai, atleast, to inform the defendants 1 and 2 as regards the factum of her execution of another Will in favour of the plaintiff on 06.06.1987 in respect of the suit properties and her intention to revoke the Will already executed in favour of the defendants under Ex.A1 either by sending a letter on her own or through her counsel in the manner known to law. On the other hand, it is found that after the execution of Ex.A1 Will Chandra Bai had not chosen to forward any communication till her demise to her daughters namely the defendants 1 and 2 as regards the execution of Ex.A1 Will and the revocation of Ex.B1 Will, in any manner and the abovesaid factors also would go to show that inasmuch as Ex.A1 Will had not been executed by Chandra Bai in a fit state of mind with the intention of conveying the suit properties in favour of the plaintiff and also inasmuch as Chandra Bai had already entrusted the title deeds to the defendants 1 and 2 at the time of execution of Ex.B1 Will and not having the custody of the title documents with her on the date of Ex.A1 Will, in all, when it is found that the subsequent conduct of the testatrix would also go to show that she had no intention to revoke the Will Ex.B1 in any manner and accordingly not endeavored to send any communication to the defendants 1 and 2 as regards the execution of Ex.A1 Will, as sought to be made out by the plaintiff. The above factor also throws a suspicion surrounding the truth and validity of Ex.A1 Will.

21. The reasonings of the Courts below that inasmuch as Ex.B1 Will had been executed in favour of the defendants 1 and 2 by Chandra Bai, there is nothing unusual on the part of the defendants to produce title deeds and accordingly ignored the failure of the plaintiff to produce the same, despite the plaintiff having come forward with the case that the title deeds had been entrusted to her father at the time of execution of Ex.A1. When according to the plaintiff, Chandra Bai was having the custody of the title documents on the date of Ex.A1 and handed over the same to the father, if the abovesaid case has any element of truth and further if really the documents had been lost by the plaintiff's father, as a prudent person, he would have initiated necessary legal action in connection with the same, and on the other hand, when it is seen that the title document has been produced only by the defendants, in such view of the matter, the reasoning of the Courts below finding a jurisdiction on the part of the plaintiff in not producing the title document is found to be totally perverse and irrational and cannot at all be countenanced in any manner.

22. Furthermore, when the attestors of the Ex.A1 Will have not thrown a clear picture as to the dissimilarities in the ink used by them and the scribe as well as the testatrix Chandra Bai and particularly when according to them, the same pen had been used by one and all and on the other hand, Ex.A1 Will is found to be consisting of different inks used by the scribe, the attestors and the testatrix and when with reference to the same there is no proper explanation on the part of the attestors or the plaintiff, the abovesaid feature also thrown a strong suspicion in the genuineness of Ex.A1 Will and merely because the attestors had come forward to tender evidence on the said Will after a long gap of time that alone by itself could not be projected to minimize the discrepancies found in the evidence of the attestors of the plaintiff as regards the abovesaid aspects. The above feature also tenders a suspicion in the genuineness of Ex.A1 Will.

23. The propounder owing the duty and bound to establish the genuineness and validity of the Will in dispute and when the plaintiff has failed to dispel the various suspicious circumstances surrounding the execution of Ex.A1 Will by the testatrix as above pointed out and discussed, the Courts below are found to have committed a total error in relying upon the patta document projected by the plaintiff for holding that the plaintiff had been enjoying the suit properties pursuant to Ex.A1 Will particularly ignoring the documents marked as Exs.24 and 25, whereunder the patta issued in favour of the plaintiff had been canceled by the competent authority and the same had been ordered to be transferred in favour of the defendants and during the pendency of the abovesaid proceedings, the plaintiff had chosen to institute the present suit and instead of directing the plaintiff to establish and explain the suspicious circumstances surrounding the Will as above pointed out and discussed, the Courts below instead of calling upon the plaintiff to discharge the onus on her part is found to have shifted the burden on the defendants in proving the same one way or the other, thereby it is seen that the the approach of the Courts below in appreciating the evidence placed on record in an improper and casual proper manner, would only go to show that there has been no real and proper application of mind on the part of the Courts below as regards the suspicious circumstances surrounding the Will Ex.A1 coupled with the materials placed on record with reference to the same, and thereby it is seen that the Courts below had erred in determining the issues involved in the matter in favour of the plaintiff and against the defendants. The plaintiff having failed to establish her possession and enjoyment of the suit properties one way or the other and when her revenue documents are found to have been canceled by the appellate authority and on the other hand the defendants have clearly establish their

possession and enjoyment of the suit properties by producing the necessary revenue documents, the Courts below are found to have erred in upholding the plaintiff's case, despite the same, on the footing that the defendants had not examined the lessees of the suit properties. When equally, the plaintiff has also not examined the lessees, the endeavour of the Courts below to uphold the plaintiff's case based on the patta documents projected by the plaintiff which had come to be set aside by the appellate authority, it is seen that the Courts below had fallen into error in holding that it is only the plaintiff, who is in possession and enjoyment of the suit properties. The Courts below had failed to note the major differences between Ex.B1 registered Will and Ex.A1 Will as regards the absence of reasons given by the testatrix as to why she had conveyed the suit properties exclusively in favour of the plaintiff excluding her other legal heirs and also not describing the suit properties in entirety and furthermore when the testatrix has not chosen to convey the execution of Ex.A1 Will in favour of the plaintiff to the defendants 1 and 2 particularly, the testatrix having died one year after the execution of Ex.A1 Will, in all, it is seen that the abovesaid factors had not been taken into consideration in the right perspective by the Courts below and erred in upholding the plaintiff's case. Merely because the attestors P.Ws2 and 3 have tendered some evidence on the execution of Ex.A1 Will by the testatrix one way or the other, however, when the suspicious circumstances surrounding the same had not been dealt with by them by giving proper and cogent reasons and with reference to the same, the plaintiff having not examined the scribe of the Will Rajammal and failed to explain the various suspicious features surrounding the Will as above noted, in all, it is seen that the plaintiff has failed to establish the truth and validity of Ex.A1 Will as well as dispel or explain the suspicious circumstances surrounding the Will as above pointed out and discussed and in the light of the above factors, the judgment and decree of the Courts below upholding the plaintiff's case cannot be sustained in the eyes of law and liable to be set aside.

24. In the light of the above discussions, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

25. In conclusion, the judgment and decree dated 09.12.2004 passed in A.S.No.7 of 2000 on the file of the Additional District Judge/Fast Track Court No.V, Chengalpat, confirming the judgment and decree dated 30.11.1999 passed in O.S.No.534 of 1993 on the file of the District Munsif Court, Tiruvalur are set aside and resultantly the suit laid by the plaintiff in O.S.No.534 of 1993 is dismissed with costs. Accordingly, the

Second Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional District Judge,
Fast Track Court No.V,
Chengalput at Thiruvallur.
2. The District Munsif,
Thiruvallur.

Copy to

The Section Officer,
VR Section, High Court.

+1cc to M/s.Paul and Paul, Advocate, S.R.No.23305
+1cc to the Government Pleader, S.R.No.22108

S.A.No.237 of 2006
and
C.M.P.No.3566 of 2006

MR(CO)
CS/17/07/2019

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