



S.A.No.37 of 2017,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2022

Pronounced on : **05.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.No.37 of 2017

and

C.M.P.No.576 of 2017

M.Thiyagarajan

... Appellant

Vs.

1.Muthusamy Gounder (died)

2.Krishnan

3.Dhanam

... Respondents

[LRs of deceased 1st respondent are already on record as appellant and respondents 2 and 3, recorded vide order of Court dated 23.02.2022 in S.A.No.37 of 2017]

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 15.07.2014 in A.S.No.41 of 2013 on the file of the Principal District Court, Namakkal, reversing the judgment and decree dated 31.01.2000 in O.S.No.69 of 1995 on the file of Subordinate Court, Namakkal.



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For Appellant : Mr.N.Damodaran

For R1 to R3 : Dr.P.Jagadeesan

J U D G M E N T

The 3rd defendant in the suit in O.S.No.69 of 1995 on the file of Sub-Court, Namakkal, is the appellant in the above Second Appeal.

2.The 1st respondent/plaintiff is the father of appellant and respondents 2 and 3 in the Second Appeal. The 1st respondent filed the suit in O.S.No.69 of 1995 before the Sub-Court, Namakkal, for partition and separate possession in respect of his 1/3 share in suit Item No.1 and 1/4 share in suit Item Nos.2 to 5 and for consequential reliefs.

3.The suit properties consist of five items. The case of 1st respondent/plaintiff in the plaint is that the suit 1st item is the ancestral property of plaintiff, in which, plaintiff and defendants 1 and 3 have equal shares. It is stated that the suit Item Nos.2 to 5 are the properties of his wife Smt. Parvathi Ammal, who died intestate and the plaintiff and defendants 1 to 3 are entitled to equal share, as plaintiff is the husband and the three



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defendants are the children of plaintiff born through his wife Smt. Parvathi Ammal. The 1st respondent/plaintiff also stated in the plaint that he incurred certain debts to the tune of Rs.60,000/- for family legal necessities and that defendants 1 and 3 along with plaintiff are bound to discharge the family debts. Therefore, he also prayed for provision being made in the decree for discharge of debts.

4.Defendants 1 and 2 remained *ex parte* before the trial Court. The appellant, who is the 3rd defendant in the suit, filed a written statement. Though the appellant admitted that the suit 1st item is the ancestral property in which plaintiff is entitled to 1/3 share and that defendants 1 and 3 are entitled to remaining 2/3rd, the suit for partition in respect of suit Item Nos.2 to 5 was contested on the ground that the mother of appellant, namely wife of 1st respondent/plaintiff, had executed a Will dated 14.12.1988 in favour of defendants 1 and 3. The case of plaintiff that he had incurred debt of Rs.60,000/- for family necessities, is also specifically disputed in the written statement.



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5. Therefore, the main issue that was raised before the trial Court is whether the Will alleged to have been executed by Smt. Parvathi Ammal, namely the wife of 1st respondent/plaintiff, dated 14.12.1988, and marked as Ex.B2, is valid and proved in the manner known to law.

6. Before the trial Court, the 1st respondent/plaintiff examined himself as P.W.1. He examined P.W.2 to P.W.4 to prove that he had executed some promissory notes in their favour while borrowing monies for family necessities and that amounts are still due under the promissory notes executed by PW1 in their favour. Plaintiff filed Ex.A1, the suit notice. Defendants examined D.W.1 to D.W.3 and marked Exs.B1 to B3. D.W.1 is the 3rd defendant. D.W.2 is one of the attestors to the Will under Ex.B2. D.W.3 is the scribe of the Will Ex.B2. Documents Exs.X1 to X6 were marked to prove the alleged debts incurred by the 1st respondent/plaintiff.

7. It is admitted that the suit Item Nos.2 to 5 originally belonged to the mother of plaintiff's wife Smt. Parvathi Ammal. Under a registered Will dated 02.12.1949, several properties including the suit Item Nos.2 to 5 were



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bequeathed in favour of Smt. Parvathi Ammal by her mother. The trial

Court held that the suit 1st item is the ancestral property of plaintiff and defendants 1 and 3. However, taking note of the fact that the plaintiff has already sold his 1/3rd share in the suit 1st item in favour of 2nd defendant, the trial Court held that the plaintiff is not entitled to the relief of partition in respect of Item No.1. With regard to other items, the trial Court held that the Will marked as Ex.B2 is proved and that therefore, the plaintiff is not entitled to any share in Item Nos.2 to 5. The Trial Court also held that the debts due under the pronotes marked through PW2 to PW4 are not true and not binding on defendants. The suit was, therefore, dismissed in entirety.

8. Aggrieved by the judgment and decree of the trial Court dismissing the suit, the plaintiff preferred an Appeal Suit in A.S.No.57 of 2000 before the III Additional District Court, Namakkal. The Appellate Court reversed the findings of trial Court on all issues and decreed the suit as prayed for.



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9.Challenging the judgment and decree of the III Additional

District Judge, Namakkal, in A.S.No.57 of 2000, the 3rd defendant preferred a Second Appeal before this Court in S.A.No.884 of 2004. By an elaborate judgment, this Court set aside the judgment and decree of the Appellate Court, but remitted the matter to the District Court, Namakkal, with the following directions :

“52.The District Court, Namakkal shall appoint an Advocate Commissioner at the costs of the plaintiff and resort to the following procedure :

“An Advocate Commissioner shall be appointed :

- (a) To carry the relevant documents in connection with this case personally in a sealed cover;*
- (b) and produce the same before the Forensic Expert;*
- (c) leave it in his custody under his acknowledgment for as many days as the Forensic Expert may require;*
- (d) collect the record from the Forensic Expert on the day as may be fixed by him;*
- (e) bring it back and lodge it with the Court.*

The Forensic Expert is directed to complete the examination of the records in any event, within 48 hours after the depositing of the same by the Advocate Commissioner with him”.



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53.The plaintiff is enjoined to produce, if not already produced, an ante litum motem registered document bearing the left thumb impression of the testator-Parvathy, so as to use it as an exemplar document for comparison with the left disputed thumb impressions of the deceased in Ex.B2-Will. After getting expert opinion it is for the first appellate Court to give opportunity to both sides to file objections, if any, and to submit their arguments and whereupon a reasoned judgment as per law has to be delivered by it. The first appellate Court shall see to it that the matter is disposed of within a period of three months from the date of receipt of a copy of this order.”

10.After remand, the matter was taken on file by the Principal District Judge, Namakkal, in A.S.No.41 of 2013. As per the directions of this Court in S.A.No.880 of 2004 earlier, the plaintiff/1st respondent filed a petition to send the Left Thumb Impression (LTI) of Smt. Parvathi Ammal found in the Register at Sub-Registrar's Office, Paramathi, for comparison with the LTI found in the Will marked as Ex.B2. It is seen that the LTI referred to in the petition is relating to a document, dated 16.07.1984,



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registered as Doc.No.654 of 1984 on the file of Sub-Registrar's Office, Paramathi. The said petition was allowed on 16.09.2013. It is admitted that, subsequently, the LTI Register in the Sub-Registrar's Office was received by the lower Appellate Court. Thereafter, the 1st respondent filed a petition for appointment of an Advocate Commissioner to compare the LTI in document Ex.B2 with the LTI of Smt. Parvathi Ammal found in LTI Register received from the Sub-Registrar's Office, Paramathi, and to obtain an expert opinion from Finger Print Bureau, Chennai. It is admitted that one Mr.K.Manokaran, Advocate, was appointed as Commissioner for the purpose of getting the expert opinion after comparing the LTI of Smt. Parvathi Ammal.

11.It is to be seen that the Certificate of Finger Print Examination reveals that the disputed LTI found in three pages of disputed Will under Ex.B2 are unfit for comparison, as they are highly smudged. However, the disputed LTI found in Page 4 of the Will Ex.B2 is found not identical to the admitted LTI found against the name 'Kannupillai @ Parvathi' in the Thumb Impression Register Vol.No.244 at Page No.100 relating to a document



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registered as Doc.No.654 of 1984 dated 16.07.1984 on the file of Sub-Registrar's Office, Paramathi. It is also seen from the Certificate that five distinctive characteristics are pointed out by the Finger Print Expert in the Certificate while giving opinion that the disputed LTI at Page 4 of the Will is not identical with the admitted LTI of Smt.Kannupillai @ Parvathi.

12.After receiving the Certificate of Finger Print Examination and original records from the Finger Print Bureau, Chennai, the lower Appellate Court gave opportunity to both sides to file objections, if any, to the Certificate. The Power Agent of the appellant filed his objections stating that the Certificate of Finger Print Examination cannot be accepted in evidence, as the appellant does not admit the LTI taken from the LTI Register in Vol.No.244 relating to a document which is registered as Doc.No.654 of 1984 on the file of the Sub-Registrar's Office, Paramathi, on the ground that the said document was executed by his mother Smt. Parvathi Ammal while she was in an unsound state of mind and therefore, the LTI found in the said document cannot be compared. Referring to some corrections in the document, the appellant contended that the corrections are



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not authorised and that therefore, the document as such cannot be taken as genuine and that the expert opinion obtained by comparing the LTI in such document with the disputed LTI, is not acceptable.

13.The lower Appellate Court, thereafter, considered the Certificate and the objections of the 3rd defendant in the light of pleadings and evidence. The oral evidence of D.W.1 to D.W.3 in relation to proof of Will was meticulously considered by the lower Appellate Court and the lower Appellate Court gave a specific finding that D.W.1, namely the appellant, has created and concocted the Will under Ex.B2 and that Smt. Parvathi Ammal never executed any Will when she was in sound disposing state of mind.

14.Aggrieved by the judgment and decree of the lower Appellate Court in A.S.No.41 of 2013, reversing the judgment and decree of the trial Court in O.S.No.67 of 1995 and decreeing the suit in toto, the above Second Appeal is preferred by the 3rd defendant in the suit.



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15.The Second Appeal was admitted on the following substantial

questions of law :

- i. *Whether the lower Appellate Court erred in law and misdirected itself in decreeing the suit in toto by holding that Ex.B2 Will was created by the appellant in suspicious circumstances and late Parvathiammal never executed any Will voluntarily, mainly based and relying upon the opinion of the Expert, without even summoning the expert to depose about the opinion given by the expert to prove the said opinion ?*
- ii. *Is not the appellant as the propounder of Ex.B2 Will proved the execution of the Will by late Parvathiammal voluntarily and in a sound state of mind by examining D.W.2, the attesting witness and D.W.3, the scribe as per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act and is not the findings rendered by the lower appellate Court in this regard is perverse, illegal and non est in law ?*
- iii. *Whether the first respondent as the plaintiff dislodged the presumption attached to Ex.B2-the notary attested will in a manner known to law ?*



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16.During the pendency of the above Second Appeal, the 1st respondent in the appeal/plaintiff died on 31.01.2022, leaving behind his two sons and his daughter as legal heirs. Since all the legal heirs of deceased 1st respondent are already on record, this Court, by order dated 23.02.2022, recorded the appellant and respondents 2 and 3 as legal heirs of deceased 1st respondent.

17.Learned counsel appearing for the appellant submitted that the finding of the lower Appellate Court that the Will under Ex.B2 was created and concocted by the appellant, was solely on the basis of report of the Finger Print Expert without reference to any other evidence. He submitted that the lower Appellate Court committed a serious error in not even marking the report of the Finger Print Expert as a document of plaintiff or as Court Exhibit. Pointing out that the Expert, who gave the Certificate on comparison, was not even examined, the learned counsel submitted that, without giving an opportunity to the parties to cross-examine the Expert who gave the Certificate, the lower Appellate Court formed an opinion about the genuineness of the document only on the basis of the Certificate of the



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Expert. Learned counsel further pointed out that the expert opinion is only a piece of evidence and that the same is not binding on Court in all cases, especially when there are substantial evidence to prove the due execution and genuineness of the Will Ex.B2.

18.Per contra, Dr.P.Jagadeesan, learned counsel appearing for the respondents, pointed out that the Will is a rank forgery concocted by the appellant with the help of his close relatives and friends. Learned counsel submitted that the appellant, being the beneficiary of the Will, played a vital role in the preparation of the Will and he failed to dispel the suspicious circumstances relating to execution of the Will Ex.B2 as borne out from the records.

19.Though this Court finds that the findings of the Appellate Court are on proper appreciation of entire evidence on record and settled principles of law regarding proof and genuineness of the Will, in view of the serious grounds raised by the appellant challenging the findings of the lower Appellate Court on the genuineness of the Will, this Court is inclined to



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consider the evidence which are required to find out whether the findings of the lower Appellate Court are perverse or without any basis, and whether this Court can interfere with the findings of the lower Appellate Court in exercise of its powers under Section 100 of Code of Civil Procedure.

20.This Court is able to see that the Courts below have considered and focused on the issue regarding the genuineness of the unregistered Will under Ex.B2 alleged to have been executed by Smt. Parvathi Ammal in favour of defendants 1 and 3 on 14.12.1988, as the only issue that is relevant to resolve all the issues that arise for consideration.

21.The plaint filed by the 1st respondent does not refer to the Will Ex.B2. The plaintiff admitted that the suit Item Nos.2 to 5 belong to Smt.Parvathi Ammal and therefore, claimed 1/4 share. Since the appellant contested the suit with regard to suit Item Nos.2 to 5 by claiming substantial right under the Will, the plaintiff filed a reply statement specifically disputing the genuineness of the Will. The plaintiff specifically stated that the Will under Ex.B2 must be a forged document. The plaintiff also stated



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that his wife Smt. Parvathi Ammal was not in a sound disposing state of mind when she was in his custody. Therefore, he put the appellant to strict proof of the said Will under Ex.B2, especially having regard to the unnatural disposition, whereunder, the plaintiff and 2nd defendant were specifically excluded.

22.It is admitted during evidence that plaintiff's wife Kannupillai @ Parvathi got the properties under a registered Will executed by her mother. It is admitted in the course of evidence that the plaintiff and his wife Smt. Parvathi Ammal were living together in the house at Keerambur. However, the document Ex.B2 is stated to have been executed by Smt.Parvathi Ammal in the presence of all the family members in the house of one Perumal, who is a relative of appellant. The house of Perumal is stated to be in Santhai Pettai Pudhur, Namakkal District which is 10 Kms away from Keerambur. Admittedly, the appellant, plaintiff and his wife Smt. Parvathi Ammal are residents of Keerambur Village. In the Will Ex.B2, there is an endorsement by a Notary Public, who is also residing at Salem, more than 50 km away from Namakkal. D.W.2, the attester of the



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Will and D.W.3, the scribe of the Will, are also from other places and no one connected with the Will or the property, was residing in Sandhai Pettai Pudhur, where the Will was executed. The Will could have been executed at the residence of plaintiff, if he is also a consenting party to the Will. The question as to why everyone should go to Sandhai Pettai Pudhur is also not explained anywhere. D.W.3-scribe who is also residing in Keerambur having office at Namakkal, admits that he does not know why he was asked to come to Sandhai Pettai Pudhur to prepare the Will, especially, when he says that a draft was prepared and he typed the Will in his office after showing the draft. Having regard to the sequence of events and attending circumstances as revealed from the oral evidence of all the witnesses, this Court is able to see that the execution of the Will under Ex.B2, i.e., at Sandhai Pettai Pudhur, making everyone to travel a distance is a suspicious circumstance. If it is a genuine document, and prepared and executed with the consent of father and sister of appellant, the same could have been registered in stead of bringing a notary from Salem. [It is case of appellant that his father [plaintiff] and his sister were also present at the time execution of Will].



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23.D.W.1 admits that the Will under Ex.B2 was executed at his request. The fact that plaintiff and his daughter 2nd defendant were not given any share in any of the five items of properties bequeathed under the Will, is also admitted. The reason stated in the Will to exclude her husband/plaintiff is that her husband has ancestral properties. However, the ancestral properties of plaintiff are not his exclusive properties and he has to share the properties with his sons. The Will under Ex.B2 is dated 14.12.1988. It is the specific case of plaintiff that his wife Smt. Parvathi Ammal was not in sound disposing state of mind in 1988. This fact was disputed by the appellant and D.W.2 and D.W.3 have also supported the appellant by stating that the testatrix Smt. Parvathi Ammal was in a sound disposing state of mind at the time of executing the Will. Strangely, the appellant himself has filed the objection to receive the expert opinion as evidence on the sole ground that the document executed by Smt. Parvathi Ammal in 1984 was during the time when she was mentally unstable. All along during trial, it is contended by the appellant that the document, dated 16.07.1984, was executed by his mother while she was in a sound disposing state of mind.



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Therefore, the evidence of D.Ws.1 to 3 regarding the testatrix's disposing state of mind is shaky.

24. There are several discrepancies in the evidence of D.Ws.1 to 3 regarding the preparation, execution and attestation of the Will. It is the case of the appellant that his mother and father went to Santhai Pettai Pudhur for execution of the Will. He further states that he was in Salem when the Will was prepared. However, he admits that the Advocate who has signed the document Ex.B2 as Notary Public was brought by him from Salem. However, in cross-examination, he gave evidence as if he has nothing to do with the execution of the Will. Ex.B2 contains the endorsement of Notary Public. D.W.3, the scribe, states that the Notary Public was present when he prepared the Will. According to the scribe D.W.3, he was not asked to type the endorsement. He also says that he wrote the endorsement in his hand, whereas the endorsement of Notary Public is typed in the last page. The nature of endorsement would also show that the endorsement is prepared by an Advocate. When there are several Advocates who are appointed as Notary Public in Namakkal, there is no



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explanation why the appellant should bring a Notary Public from Salem, which is more than 50 km away from the place of execution. D.W.3, during his cross-examination, says that the attester by name Chinnusamy put his signature in English. However, the signature of Chinnusamy and the details about Chinnusamy are only in Tamil. One of the attesting witness-D.W.2, during cross-examination, stated that the signature of Chinnusamy and Palanivelu were obtained before he put signature. From the evidence, it is understood that the version of D.W.2 is that he put his signature after the signature of identifying witness and the other witness Palanivelu. However, D.W.2 has signed as the first attester as seen in Ex.B2.

25.D.W.1 is the appellant who claims right under Ex.B2 Will. He admits that the Will was executed by his mother on his request. From the entire evidence, it is seen that D.W.1 was the person who played an active role in execution of the Will. The Will executed in the house of one Perumal in Santhai Pettai Pudhur which is not the place of residence of testatrix and D.W.1 admits that Perumal is closely related to him. From his evidence, it is not known how plaintiff is related to the said Perumal, who is the owner of



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the house where the alleged Will was executed. D.W.2 is one Pulla Gounder. He admits that his granddaughter was given in marriage to appellant. D.W.3 is the scribe whose versions are contrary to several facts as seen from the document Ex.B2 and the evidence of other witnesses.

26. Even though the Will Ex.B2 is dated 14.12.1988, the appellant as D.W.1 categorically admits that he has not taken steps for mutation of Revenue records or for getting patta till the suit was filed in 1995. It is to be noted that the appellant has admitted that he has not paid the Property Tax for the suit properties. Even though Smt. Parvathi Ammal died within two months from the date of alleged Will under Ex.B2 dated 14.12.1988, the fact that the appellant has neither taken steps for mutation of name in Revenue records nor paid Kist or Property Tax, would show that the Will under Ex.B2 did not surface atleast till the suit was filed. During evidence, D.W.1, the appellant, has admitted as follows :

“வாதி, 1ம் பிரதிவாதி என்னுடைய தாயார் மூன்று பேரும்
கீரம்பூரில் தான் வசித்து வந்தார்கள். 1ம் பிரதிவாதியும்,
என் தகப்பனாரும் அதே வீட்டில் தான் வசித்து



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வருகிறார்கள். என் தம்பிக்கு திருமணம் ஆனவுடன் பாகம் பிரித்துக் கொடுக்கச் சொல்லி கேட்டேன். என் தகப்பனார் என் தாயார் பெயரில் உள்ள சொத்து பூர்வீக சொத்தையும் சேர்த்து மொத்தமாக 3 பாகமாக பிரிக்க வேண்டும் என்று சொன்னார். நான் பூர்வீக சொத்தை மட்டும் 3 பாகமாக பிரிக்க வேண்டும் என்றும், என் தாயார் பெயரில் உள்ள சொத்தை 2 பாகம் தான் பிரிக்க வேண்டும் என்று சொன்னேன்.”

27.From the above evidence, the appellant admits that his father, the plaintiff, was residing with the 1st defendant and his mother in Keerambur. When the plaintiff suggested that the suit properties should be divided into three shares and did not even refer to the Will as a basis to insist division in accordance with the Will, this Court is unable to accept the case of appellant that the Will was executed in the presence of all the natural heirs, attestors, and identifying witness as deposed by DW1. The case of appellant that his sister 2nd defendant was also present at the time of execution of Will cannot be believed. When 2nd defendant was not given any share in Ex.B2, there is no reason why she should come to the place



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where the Will was executed in favour of the appellant. If she was present why she was not asked to attest. Therefore, the appellant has come forward with a false case that everyone in the family who are interested in the properties dealt with under the Will were present at the time of execution of the Will. As pointed out earlier, the evidence of D.W.1, D.W.2 and D.W.3 do not inspire confidence having regard to the discrepancies and the fact that they are not independent. DW2 is the grandfather of appellant's wife. DW3 is a hired scribe and author of Will.

28.The appellant could have brought the testatrix to the Registrar's Office to register the Will, as it is more convenient to all parties who were present or who have signed Ex.B2 either as attesor, scribe or identifying witness. A Will has to be executed by the testator in the presence of two witnesses. Even the person who has signed the document as identifying witness is not examined. The fact remains that close relatives and associates of appellant have signed the document as attesor, identifying witness and scribe. This Court finds no explanation for several suspicious circumstances



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which are required to be dispelled by the propounder of the Will.

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29.Now, on examining the Certificate of Finger Print Examination issued by Finger Print Bureau, this Court finds that the opinion given is independent on the meticulous analysis of the document Ex.B2 and the specimen LTI called for from the Sub-Registrar's Office. The fact that there is no identical feature is relevant to hold that the Will Ex.B2 is not genuine. It is true that the expert who gave the Certificate is not examined. However, this could have been insisted. As seen from Para 53 of the order of remand, the Appellate Court was directed to give opportunity to both sides to file objections to the Expert opinion after it is obtained. Since the Certificate is in favour of plaintiff, examination of the author of the Certificate is not necessary for the plaintiff/1st respondent. However, the appellant, whose criminal act of forgery is highlighted as inferred from the report, cannot be a silent spectator and could have taken steps to examine the author of the Certificate. When the Certificate was obtained pursuant to the directions of this Court while remitting the matter back to the District Court, the Certificate obtained pursuant to the directions of Court, may be considered



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as a Court document. Further, no argument was advanced before the Appellate Court as to the relevance or admissibility of the report on this ground. The objection to the report was on the ground that the thumb impression of the testator in the specimen document is not admitted. In such circumstances, this Court is unable to appreciate the contention of the appellant that the Certificate from Finger Print Bureau cannot be relied upon. From the nature of objections raised by appellants to the opinion of Expert, this Court has no reason to discard the expert's opinion. As pointed out earlier, even without the expert's opinion, the Appellate Court has reasons to hold that the Will under Ex.B2 is concocted and forged by the appellant.

30.From the overall analysis of the documents and evidence, this Court finds that the findings of the lower Appellate Court on the genuineness of the Will Ex.B2 are proper and based on proper appreciation of the whole evidence. This Court is unable to find any substance in any of the questions of law to exercise the jurisdiction under Section 100 of Code of Civil Procedure to interfere with the findings of the lower Appellate Court,



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especially when the reasons given by the lower Appellate Court are unassailable. In view of the conclusion reached above, this Court holds that the Will under Ex.B2 is not a genuine document and it is a document concocted by appellant.

31. Therefore, this Court is of the view that the plaintiff/1st respondent is entitled to $\frac{1}{4}$ share in suit Item Nos.2 to 5. As regards suit Item No.1, though the Court below have held that plaintiff is entitled to $\frac{1}{3}$ share along with defendants 1 and 3 in respect of suit Item No.1, by virtue of Hindu Succession (Amendment) Act, 2005, daughter is also entitled to equal share as that of son. Hence, even in respect of 1st item, the plaintiff and defendants 1 to 3 are entitled to $\frac{1}{4}$ share. Since the plaintiff is no more, his $\frac{1}{4}$ share shall devolve on defendants 1 to 3 in normal circumstances.

32. However, it is stated that the plaintiff has executed a sale deed in favour of 2nd defendant in respect of his share in suit 1st item. The plaintiff is entitled to dispose of his undivided $\frac{1}{4}$ share in all the suit properties in favour of anyone including defendants 1 and 2. However, no



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other alienation or gift in favour of defendants 1 to 3 is brought to notice.

The debts alleged by the plaintiff are not proved and hence, the plaintiff is not entitled to any relief regarding alleged debts.

33.As a result, the judgment and decree of the Appellate Court in A.S.No.41 of 2013 are modified as indicated below while confirming the findings as regards the Will:

- i. The suit in O.S.No.69 of 1995 is decreed by declaring that the plaintiff is entitled to 1/4th share in all the suit properties. The Sale Deed executed by plaintiff in favour of 2nd defendant is binding on other defendants in respect of suit 1st item and the 2nd defendant is entitled to 1/2 share in suit 1st item subject to payment of separate court fee.
- ii. Since the 1st respondent died pending this Appeal, his one-fourth share devolves on defendants 1 to 3 and defendants 1 to 3 are entitled to each 1/3rd share in suit items 2 to 5.



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34.With the above modification, this Second Appeal is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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