N. Renuka Devi Vs. E. Lalitha and Another

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Court : Chennai

Decided On : Mar-04-2016

Judge : G. Chockalingam

Appeal No. : T.O.S. No. 2 of 2009 & A. Nos. 4456 to 4458 & 4533 of 2014

Appellant : N. Renuka Devi

Respondent : E. Lalitha and Another

Judgement :

(Prayer: T.O.S.No.2 of 2009 numbered on conversion of O.P.No.367 of 2008, filed under Sections 232 and 276 of the Indian Succession Act, 1925, read with Order 25 Rule 5 of the Madras High Court Original Side Rules, praying that Letters of Administration with a Will annexed, may be granted to the plaintiff as the daughter and one of the legatees under the Will of the deceased S.V.Ramakrishnan, having effect limited to the State of Tamil Nadu.)

1. T.O.S.No.2 of 2009 is numbered on conversion of O.P.No.367 of 2008, praying that Letters of Administration with a Will annexed, may be granted to the plaintiff as the daughter and one of the legatees under the Will of the deceased S.V.Ramakrishnan, having effect limited to the State of Tamil Nadu.

2. The case of the plaintiff is as follows:

(a) The father of the plaintiff is late Mr.S.V.Ramakrishnan and he died on 31.12.1980 at "Ramamandiram" No.868, Poonamallee High Road, Kilpauk, Chennai-600 010, where he was then ordinarily residing within the State of Tamil Nadu. He executed the last Will and Testament on 15.07.1970 in the city of Madras, in the presence of two witnesses who signed and attested the Will. The Will is registered as Document No.39 of 1970 in the office of the Sub-Registrar, Purasawalkam, Chennai. Both the attesting witnesses, namely Mr.T.S.Ramadoss and Dr.R.Paul Doraiswamy, are not alive as on date. Hence, third party affidavit has been filed.

(b) The properties under the Will have been bequeathed to the plaintiff to be enjoyed for her lifetime and thereafter, to be inherited absolutely by her children. The plaintiff has one daughter and one son, viz., N.Divya and N.Dheeraj Kumar and they have given consent in favour of the plaintiff. The plaintiff continues to be a Hindu and her husband Mr.N.Niranjan Kumar is also a Hindu. The deceased S.V.Ramakrishan, the testator, has given certain directions for payment of maintenance to his wife Smt.S.V.R.Sarjoa, the plaintiff's mother.

(c) Though the Will provides for vesting of properties with the Official Trustee or such Officer or person appointed by this Court, such vesting was restricted only till the plaintiff completes the age of 18 years and the plaintiff has completed the age of 18 years on 22.06.1979 and hence, the provision for the Official Trustee to take over the properties as on date, does not have any force.

(d) By the said Will, the deceased did not appoint any executor and hence, she has filed the petition for grant of Letters of Administration with the Will annexed. The amount of immovable assets which are likely to come in the hands of the plaintiff, does not exceed in the aggregate sum of Rs.2,80,00,000/- and the net amount of assets after deducting all items which the plaintiff by law allowed to deduct, is only of the value of Rs.2,79,93,000/-. All the other movable assets mentioned in the Will had been disposed of by the testator himself during his lifetime.

(e) No application has been made to any District Court or delegate or to any other High Court for the probate of the said Will of the deceased or Letters of

Administration with or without the Will annexed of his property and credit. The plaintiff undertakes to duly administer the property and credits of the deceased S.V.Ramakrishnan and in any way concerning his Will, by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of Letters of Administration with the Will annexed and also to render to this Court a true account of the said property and credits within one year from the said date.

(f) Though the plaintiff was aware of the existence of the Will for all these years, she has been advised to get the Letters of Administration only recently to safeguard her interest and that of her children and also the wishes of her deceased father. Further, various litigations relating to the estate also delayed her to file the petition. Though there is no time limit for filing petition for Letters of Administration, she explains as stated above, since no laches could be attributed to her.

(g) The deceased S.V.Ramakrishnan has left the following persons as his legal heirs:

(i) Mrs.S.V.R.Saroja - Second wife,

(ii) Mrs.R.Vijayalakshmi @ R.Vijaya - daughter,

(iii) Mr.S.V.R.Ramprasad - son,

(iv) Mrs.N.Renuka Devi - daughter,

(v) Mrs.R.S.P.Dhanurmathi - daughter,

(vi) Mrs.E.Lalitha - daughter and

(vii) Mr.S.V.Mathaprasad @ Pancras Matha Prasad - son.

Mrs.E.Lalitha and Mr.S.V.Mathaprasad @ Pancras Matha Prasad are daughter and son respectively, of the first wife S.V.Rajalakshmi, who pre-deceased the testator. The parents of the deceased pre-deceased him.

(h) The plaintiff has filed consent affidavits of Smt.S.V.R.Saroja, Mrs.R.Vijayalakshmi, Mr.S.V.R.Ramprasad and Mrs.R.S.P.Dhanurmathi. The notice has to be issued only to Mrs.E.Lalitha and Mr.S.V.Mathaprasad @ Pancras Matha Prasad. She prays that Letters of Administration with the Will annexed may be granted to her as the daughter and one of the legatees under the Will of the deceased S.V.Ramakrishnan having effect limited to the State of Tamil Nadu.

3. The first defendant has filed written statement stating as follows:

(a) The petition is not maintainable either in law or on facts and the same is liable to be dismissed in-limine. The averment that the first respondent (S.V.R.Saroja) is the wife of late S.V.Ramakrishnam, is denied and the fact is that Mr.S.V.Ramakrishnan was only married to Smt.Rajalakshmi and the first and second defendants were born out of that wedlock. Smt.Saroja was never married to late S.V.Ramakrishnan and she was wife of one Mr.A.Ramadoss and had a child through that marriage. She, with malicious intent, schemed and enticed late S.V.Ramakrishnan to develop illicit intimacy with her. This illicit relationship caused havoc in the family and was the reason for the defendant's mother's mysterious death on 04.03.1952 and also death of Smt.Vellamal, the adoptive mother of Mr.S.V.Ramakrishnan. Mrs.Saroja was pestering her father to marry her and she also harassed him through a criminal case in the year 1956 and the defendant's father was forced to compromise with her. Mr.S.V.Ramakrishnan was a dotting father and he never conceded her demand to marry him. There had been no marriage between Mrs.Saroja and Mr.S.V.Ramakrishnan.

(b) The first defendant had no knowledge of the information contained in paragraphs 3 to 5 of the affidavit filed in support of the petition. It is an admitted fact that the fifth respondent is the only legitimate daughter and the sixth respondent is the only legitimate son of the deceased S.V.Ramakrishnan. It is true that late Mr.S.V.Ramakrishnan died on 31.12.1980 at "Ramamandiram", No.868, Poonamalle High Road, Kilpauk, Chennai-600 010. It is absolute false that late S.V.Ramakrishnan executed a Will in the city of Madras on 15.07.1970. The first defendant doubts the genuineness of the Will purported to be executed, attested and registered on 15.07.1970. After driving out the defendants from the

household, Mrs.Saroja had complete control over late S.V.Ramakrishnan and the said Will had been obtained by coercion and undue influence.

(c) The first defendant's father wanted his property to devolve on his successors. The first defendant's father was never married to Mrs.Saroja and her children are illegitimate. The Will itself states that "I am living with Srimathi Saroja, and we are living as husband and wife, even though there has not been a marriage between us." Mr.S.V.Ramakrishnan was physically not fit and mentally not alert and he died after prolonged illness. The first defendant's father was very well versed in Court procedures, but the reading of the purported Will shows that it has been drafted by a layman. There has been a long gap of 10 years between execution of the Will and the death of the testator. Mrs.Dhanurmathi was born during this period, so, if the Will has been genuine, the testator would have definitely left a codicil for her benefit. The said Will does not contain the last Will of the testator.

(d) The first defendant's late father Mr.S.V.Ramakrishnan was residing at Nos.868 and 869, Poonamallee High Road, Kilpauk, Chennai-600 010 and the said property is spread over sixty grounds and contained a huge building and the plaintiff and the respondents 1 to 4 executed sale deeds in respect of the aforesaid property and appropriated the sale proceeds.

(e) The purported Will does not contain any detail of the properties. The deceased S.V.Ramakrishan was not the absolute owner of the properties as listed out in the affidavit of assets and the properties are not his self-earned properties. The properties are ancestral, coparcenary and the deceased S.V.Ramakrishnan took the properties as the adopted son of late S.Ramaswamy Mudaliar, as per the directions of the Will, dated 10.09.1937, which had been probated in O.P.No.7 of 1938 in this Court by the executrix Smt.Vellammal, who thereupon registered a deed of adoption bearing Doc.No.125 of 1938 at the office of the District Registrar, Chenai-600 001, confirming the said adoption.

(f) A mere reading of the purported Will shows that 'all the properties on the date of my death shall be taken over by the Official Trustee or such officer or person appointed by Court'. The first respondent-Mrs.Saroja, the mother of the plaintiff, intentionally did not take steps to inform the Court about the Will after the death of

S.V.Ramakrishnan. There is no explanation in this regard by the plaintiff. All these years, the plaintiff and the respondents 1 to 4 had been claiming in the numerous Court cases that a Will, dated 15.07.1970 has been left by late S.V.Ramakrishnan and they are going to probate it, but they never took any steps all these years. They knew that purported Will does not contain last Will of the testator.

(g) There has been a long gap of 28 years since her father died and now the plaintiff has come for Letters of Administration and the long delay in probating the Will has not been explained. The plaintiff has not come before this Court with clean hands and it is for the sole purpose to delay and deny the benefits to the real legal heirs of late S.V.Ramakrishnan.

(h) The defendant denies that respondents 1 to 4 and the plaintiff are the legal heirs of the deceased S.V.Ramakrishnan. The defendants are the only legal heirs of the deceased. The deceased S.V.Ramakrishnan was married to S.V.Rajalakshmi and out of wedlock, defendants were born. The first respondent was only concubine of the deceased S.V.Ramakrishnan. She was never married to him and respondents 2 to 4 and the plaintiff are illegitimate children.

(i) In the affidavit of assets - Annexure-A, I -- movables had been given falsely. The movables like cash, household goods, paintings, shares, gold and silver articles and share certificates worth several lakhs, had been misappropriated and had not been properly accounted. The plaintiff has deliberately suppressed the facts in the affidavit of assets filed by her. As per Annexure-A, II, immovable properties, item No.1 is a family temple, item No.2 is family burial ground and item Nos.3 and 4 are the ancestral coparcenary properties. Item Nos.3 and 4 were subject matter of suit in C.S.No.43 of 1962 before this Court, where Mr.S.V.Ramakrishnan and his only son Mr.S.V.Mathaprasad, had been plaintiffs and the said suit was decreed in their favour and the defendant filed appeal in O.S.A.Nos.8 and 9 of 1966 and a Division Bench of this Court allowed the appeals and set aside the decree of the trial Court. Mr.Ramakrishna Mudaliar preferred S.L.P. to the Supreme Court. Leave was granted and the appeal was numbered as C.A.No.224 of 1974, which was allowed by the Supreme Court on 17.04.1995, which upheld the judgment of the trial Court. E.P.No.48 of 1997 in the said matter

is pending before this Court.

(j) The plaintiff along with respondents 1 to 4, inter-meddled with the estate of late S.V.Ramakrishnan and has dealt in excess with properties beyond the scope of the purported Will. The plaintiff and others executed a sale deed in favour of D.K.Sekar, relating to the property situated at No.30, Ormes Road, Kilpauk, Chennai-10, representing themselves to be the legal heirs of late S.V.Ramakrishan, which ended in Court proceedings C.S.Nos.577 to 579 of 1995 by judgment dated 22.01.2002, wherein it was declared that they cannot claim themselves as legal heirs of late S.V.Ramakrishnan and as such, the sale was deemed null and void.

(k) The Will dated 15.07.1970 does not contain any of the properties listed out in the affidavit of assets. Item Nos.1 and 2 of the properties are ancestral family properties, one being a Ganesha Temple and the other, a family burial ground, which cannot be Willed away to the plaintiff or respondents 1 to 4. Item Nos.3 and 4 are the subject matter of pending litigations to which the plaintiff and respondents 1 to 4 have been agitating ever since 1999 and being unable to prove their legitimacy, have now come forward after 28 years to probate the Will, knowing fully well that the Will does not contain the said properties and only to deceive the Court. As regards the properties contained in item Nos.3 and 4 of the affidavit of assets, during the pendency of the appeal C.A.No.224 of 1974, the plaintiff and respondents 1 to 4 executed assignment deeds in favour of M/s.Lalachand Megnraj and Chimandas Megnraj, relinquishing their rights to the said properties stating that, "Whereas S.V.Ramakrishnan Mudaliar having executed the Will and testament dt. 15.07.1970 had died intestate in respect of the right to obtain re-conveyance of the property forming the subject matter of C.A.No.224/74 pending on the file of the Supreme Court." The acceptance of this statement by the plaintiff and the respondents 1 to 4 is confirmation that the Will does not contain item Nos.3 and 4 of the affidavit of assets.

(l) The illegitimate children and their mother have been trying all these years to claim in Court proceedings that they are the legal heirs and has suppressed the Will. But in several judgments of this Court, it has been upheld that Mrs.Saroja is

not legally wedded wife of Mr.S.V.Ramakrishnan and her children are illegitimate. The plaintiff, with the help of her brother, the third respondent, had been misleading the Courts. The plaintiff has been approbating and reprobating to suit her needs and the plaintiff, with the aid of the third respondent, has been abusing the process of Court. The first defendant prays that the suit may be dismissed.

4. The second defendant has filed written statement stating as follows:

(a) The petition is not maintainable either in law or on facts and the same is liable to be dismissed in-limine. The second defendant denies the allegations contained in paragraphs 2 to 5 of the affidavit filed in support of the petition. It is admitted fact that the fifth and sixth respondents are the legitimate daughter and legitimate son of the deceased S.V.Ramakrishnan. It is true that Sri.S.V.Ramakrishnan died on 31.12.1980. It is true that Sri.S.V.Ramakrishnan executed a Will, dated 15.07.1970.

(b) The deceased S.V.Ramakrishnan was not the absolute owner of the properties as listed out in the affidavit of assets and the properties are not his self-earned properties. The properties are ancestral coparcenary and the deceased S.V.Ramakrishnan took the properties as the adopted son of late S.V.Ramaswamy Mudaliar as per the directions of the Will, dated 10.09.1937, which had been probated in O.P.No.7 of 1938 in this Court by the executrix Smt.Vellammal, his wife, who thereupon even registered a deed of adoption bearing Doc.No.125 of 1938, registered at the Office of the District Registrar, Chennai-600 001, confirming the said adoption. The second defendant's late father, the said late S.V.Ramakrishnan was residing at Nos.868 and 869, Poonamallee High Road, Kilpauk, Chennai-600 010, and the property as such was spread over sixty grounds and contained a huge building and he was living there till his death on 31.12.1980.

(c) The plaintiff and the respondents 1 to 4 executed sale deeds in respect of the aforesaid property bearing Door Nos.868 and 869, Poonamallee High Road, Kilpauk, Chennai-600 010 and appropriated the sale proceeds. The plaintiff and the respondents 1 to 4 have also appropriated all the movables, such as valuable gold, silver and precious stone jewelleries, antiques consisting of rare paintings

and costly furnitures, cash deposits in Banks and shares worth several lakhs. The plaintiff deliberately suppressed the facts in the affidavit of assets filed by her.

(d) A mere reading of the Will shows that, "all the properties on the date of my death shall be taken over by the Official Trustee or such officer or person appointed by the Court." The first respondent-Smt.Saroja, the mother of the plaintiff, intentionally did not take steps to inform the Court about the Will on the death of S.V.Ramakrishnan and there seems to be no explanation in this regard by the plaintiff. This only shows the mala-fide intentions of the first respondent and the plaintiff.

(e) The household of the deceased S.V.Ramakrishan and his family consisting of his wife late Smt.Rajalakshmi and his two children, Lalitha (respondent 5) and Matha Prasad (Respondent 6) and his adoptive mother Smt.Vellammal (late), was a peaceful and harmonious household, until the advent of Saroja, the first respondent, the wife of Mr.A.Ramadoss, into the household. Smt.Saroja, the first respondent, though married to A.Ramadoss and having a child of her own, with malicious intent, entered the household of Ramakrishnan being envious of her sister's lifestyle and the status that she enjoyed. She schemed and enticed Ramakrishnan to develop illicit intimacy with her. The first respondent's behaviour with Ramakrishnan disrupted the peaceful atmosphere of the family and was the cause of the death of the mother, Rajalakshmi, of respondents 5 and 6 on 04.03.1952 and later that of their grandmother Vellammal in the same year in July.

(f) The first respondent even succeeded in bringing about an estrangement between late S.V.Ramakrishnan and his children, viz, the respondents 5 and 6 after the death of their mother and the first respondent cunningly induced respondent 5--Lalitha to marry her maternal uncle Mr.Ekambaram much to the displeasure of her father late S.V.Ramakrishnan and also succeeded in estranging the feeling of the father and son--respondent 6 and his father late S.V.Ramakrishnan. The first respondent thereafter induced and coerced S.V.Ramakrishnan to execute the Will and it is with great aversion, he consented. The Will itself would bear witness to the animosity that he bore towards the first respondent--Saroja in stating that, "I am living with Smt.Saroja and we are living as

husband and wife even though there has not been a marriage between us." This statement clearly shows that Saroja was not the wife of S.V.Ramakrishnan, but only a concubine, thereby, she and her children have no inheritable status. This aspect was confirmed by Court proceedings in C.S.No.108 of 1992 and confirmed in O.S.A.No.47 of 1994 and finally in C.S.Nos.577 to 579 of 1995, by judgment dated 22.01.2002 in relation to a sale deed executed by the first respondent, the plaintiff and the respondents 2 to 4 to Mr.D.K.Sekar. The first respondent in her own affidavit before the City Civil Court, Chennai in C.M.P.No.12172 of 1972 in L.A.C.No.223 of 1959, has admitted to the fact that she is not the wife of late S.V.Ramakrishnan. In that affidavit, she states, "I, Saroja, daughter of Govindaswamy Mudaliar etc, etc---" and not as the wife of S.V.Ramakrishnan, and this statement is much after the Will dated 15.07.1970.

(g) Item Nos.3 and 4 of the affidavit of assets, are the subject matter of E.P.No.48 of 1997 in C.A.No.224 of 1974 in C.S.No.43 of 1962, presently on the file of the Supreme Court of India as S.L.P.Nos.13783 to 13786 of 2008. The Will has no schedule of properties. It simply states, "It will not be possible now to detail the properties immovable, movable, cash etc., that I may die possessed of. Hence I do not propose to detail them." Neither the Will provides for the fourth respondent-Dhanurmathi, nor is there a codicil to that effect. The Will neither gives the first respondent--Saroja the status of a wife, for it states, "I am living with Srimathi Saroja, and we are living as husband and wife even though there has not been a marriage between us." This statement only shows that he accepted her as his concubine, which has been admitted by the first respondent-Saroja in her own sworn affidavit before the City Civil Court, Chennai in C.M.P.No.12172 of 1972 in L.A.C.No.223 of 1959, which reads, "I, Saroja, daughter of Govindaswamy Mudaliar, aged 33 years..." and it further states, "I am the mother and guardian of Ramprasad, the second claimant. I state that having regard to the facts of the case, and the legal position, the minor second claimant is not entitled to any right etc."

(h) Item Nos.3 and 4 of the affidavit of assets are the subject matter of appeal Civil Appeal No.224 of 1974 arising out of O.S.A.Nos.8 and 9 of 1966 as against judgment and decree in C.S.No.43 of 1962 filed by S.V.Ramakrishnan and this

defendant against M/s.Buharis. The original specific performance suit C.S.No.43 of 1962 filed by this defendant and his late father S.V.Ramakrishan, against Mrs.Fathima Buhari and Mr.A.M.B.Buhari, was decreed in their favour. Thereupon, entailment of litigation of O.S.A.Nos.8 and 9 of 1966 led to appeal Civil Appeal No.224 of 1974 on the file of the Supreme Court of India. During the pendency of the said Civil Appeal No.224 of 1974, the plaintiff and the respondents 1 to 3 only filed C.M.P.No.7242 of 1981 claiming themselves as legal representatives of the deceased Ramakrishnan by virtue of the unprobated Will, dated 15.07.1970. During the pendency of the appeal in Civil Appeal No.224 of 1974, the plaintiff and the respondents 1 to 3 and also the fourth respondent, executed assignment deeds in favour of M/s.Lalchand Megnraj and Chimmindas Megnraj, relinquishing their rights to the said properties, stating that, "Whereas S.V.Ramakrishna Mudaliar notwithstanding having executed the Will and Testament dt.15.07.1970 had died intestate in respect of the right to obtain re-conveyance of the property forming the subject matter of C.A.No.224/74 pending on the file of the Supreme Court." Acceptance of this statement by the plaintiff and the respondents 1 to 4, is confirmation that the Will does not contain item Nos.3 and 4 of the affidavit of assets. Even assuming that the plaintiff could claim vide intestate succession, she and the respondents 1 to 4 have to prove their legitimacy rights under the provisions of the Hindu Law.

(i) Appeal in Civil Appeal No.224 of 1974 was allowed by the Supreme Court of India on 17.04.1995 and the trial Court's judgment and decree was restored and the judgment debtors M/s.Buharis were directed to re-convey the suit properties in accordance with the trial Court's decree in C.S.No.43 of 1962, wherein, this defendant and late S.V.Ramakrishnan alone were plaintiffs. Under the provisions of Section 213 of the Indian Succession Act, the plaintiff and respondents 1 to 3 could not claim to be decree-holders. In accordance with the order of the Supreme Court, this defendant filed Execution Petition in E.P.No.48 of 1997, which is still pending because of frivolous petitions filed by third parties as well as by the respondents 1 to 4 and the plaintiff herein.

(j) The third respondent, for himself and on behalf of the plaintiff and respondents 1 and 2 and even 4, filed objections to E.P.No.48 of 1997 after nearly five years

after the pronouncement of the judgment by the Apex Court on 17.04.1995, claiming to be the legitimate claimants suppressing the Will, dated 15.07.1970. However, matters ensued further litigation and was finally decided on 17.04.2003 in S.L.P.(C).C.C.No.895 of 2003, in which, it is stated that, "It is hereby clarified that if any suit is filed interse the contending claimants to the ownership of the suit property then the question of ownership the number of owners and the extent of share shall be decided in that suit only." Even after the orders passed by the Apex Court on 17.04.2003, the plaintiff, though fully aware of the prevailing situations, made no attempt to probate the Will.

(k) The matters relating to item Nos.3 and 4 are still being agitated in the Supreme Court because of the interference of third parties filing frivolous petitions with the intent to stall proceedings in the execution proceedings relating to E.P.No.48 of 1997 in C.S.No.43 of 1962. The plaintiff, with the aid of the respondents 1 to 4, inter-meddled with the estate of late S.V.Ramakrishnan and in excess, has dealt with properties beyond the scope of the so-called Will. The plaintiff and others who had executed a sale deed relating to property bearing No.30, Ormes Road, Kilpauk, Chennai-600 010, purporting to be the legal heirs of late S.V.Ramakrishnan to Mr.D.K.Sekar, ended in Court proceedings in C.S.Nos.577 to 579 of 1995 by judgment dated 22.01.2002, wherein it was declared that they cannot claim themselves as legal heirs of late S.V.Ramakrishnan and as such, the sale was deemed null and void.

(l) The Will, dated 15.07.1970 does not contain any of the properties listed out in the affidavit of assets. Item Nos.1 and 2 properties are ancestral family properties, one being a Ganesha Temple and the other, a family burial ground, which incidentally cannot be Willed away to strangers such as the plaintiff and the respondents 1 to 3 or even to respondent 4. Items 3 and 4 are subject matter of pending suits, to which the plaintiff and respondents 1 to 4 have been agitating ever since 1999 and being unable to prove their legitimacy to claim the property, have now come forward after 29 years to probate the Will, knowing fully well that the Will does not contain the said properties, even at the loss of their status, only to deceive the Court and harass the respondents 5 and 6 from claiming what rightfully belongs to them and to further stall the progress of the Execution Petition

in E.P.No.48 of 1997 in C.S.No.43 of 1962 in the Master's Court.

(m) The statement in the Will that, "All the properties on the date of my death...", by no stretch of imagination could include the decree that would be passed 15 years after his death, the testator could not have envisaged the outcome of the pending suit Civil Appeal No.224 of 1974 arising out of O.S.A.Nos.8 and 9 of 1966 in C.S.No.43 of 1962 on the file of the Supreme Court of India in the year 1970. The property had been passed on to M/s.Buharis by the Division Bench judgment in O.S.A.Nos.8 and 9 of 1966, as such, M/s.Buharis were the owners of the properties and in possession of the same. The testator did not possess item Nos.3 and 4 of the affidavit of assets as set out by the plaintiff, for him to deal with them. The testator died after 10 years after the execution of the Will, dated 15.07.1970 on 31.12.1980 and he, in no way altered the said Will or annexe a codicil to the said Will in view of the situation prevailing during that period. The testator does not make any reference to the said pending suit C.A.No.224 of 1974 on the file of the Supreme Court of India or of its outcome to enable the beneficiaries to lay claim to those properties.

(n) The plaintiff, with the help of her brother, the third respondent, had been misleading the Courts and she has been approbating and reprobating to suit her needs. The plaintiff, with the aid of the third respondent, had been abusing the process of Court. The second defendant prays that the suit may be dismissed.

5. The plaintiff has filed reply statements separately, denying the averments made in the written statements filed by defendants 1 and 2.

6. This Court, by order dated 06.11.2009, framed the following issues for consideration in the suit:

(i) Whether the Will dated 15.07.1970 propounded to be the last Will of deceased S.V.Rama Krishnan is genuine and legally valid?

(ii) Whether the suit Will was obtained by coercion and exerting undue influence as pleaded by the defendants ?

(iii) Whether the plaintiff is entitled to the grant of Letters of Administration as prayed for in this suit ? and

(iv) To what other relief the parties are entitled ?

7. During the course of trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 (N.Renuka Devi) and P.W.2 B.Murali Kumar, P.W.3 N.Dheeraj Kumar, P.W.4 N.Divya Deepa and P.W.5 Dr.Philip Rajanna Doraiswamy, were examined and Exs.P-1 to P-78 were marked. On the side of the defendants, the first defendant was examined as D.W.1 (E.Lalitha) and the second defendant was examined as D.W.2 (S.V.Mathaprasad) and Exs.D-1 to D-25 were marked.

8. During the pendency of T.O.S.No.2 of 2009, the second defendant has filed the following applications for the relief stated therein:

(a) A.No.4456 of 2014 in T.O.S.No.2 of 2009 is filed to direct the plaintiff to pay proper Court fees according to the market value of the suit properties which is Rs.34,85,27,994/- crores and make up the deficit of the Court fees.

(b) A.No.4457 of 2014 in T.O.S.No.2 of 2009 is filed to pass a decree of dismissal of the suit filed by the plaintiff on the ground of admission.

(c) A.No.4458 of 2014 in T.O.S.No.2 of 2009 is filed to reject the plaint in T.O.S.No.2 of 2009 with regard to the properties listed in Annexure-A therein, specially, in regard to immovable properties Nos.3 and 4 of the affidavit of assets.

(d) A.No.4533 of 2014 in T.O.S.No.2 of 2009 is filed to frame an additional issue on the question of limitation and to decide the said same as a preliminary issue.

9. This Court, on a consideration of the pleadings and evidence adduced, both in the suit and in the above applications, heard the submissions made by learned counsel appearing for the parties and perused the relevant records.

10. Learned counsel appearing for the plaintiff contended that the suit schedule properties belong to late S.V.Ramakrishnan and out of free consent, with sound and disposing state of mind, he executed the Will on 15.07.1970, which is marked as Ex.P-1. Subsequently, he died on 31.12.1980. His Death Certificate is marked

as Ex.P-23. The plaintiff is one of the daughters of the deceased S.V.Ramakrishnan and the said Will was executed in favour of the plaintiff with some conditions. Learned counsel for the plaintiff further contended that the first defendant is another daughter of the deceased S.V.Ramakrishnan and the second defendant is his son. The wife of the deceased S.V.Ramakrishnan is S.V.R.Saroja and his first wife S.V.Rajalakshmi died. The said was executed by late S.V.Ramakrishnan in the city of Chennai in the presence of two attesting witnesses, both of whom died. The Will was registered in the Office of the Sub-Registrar, Purasawalkam, Chennai, as Document No.39 of 1970. Since both the witnesses are not alive, in order of prove their signatures, the close relatives of the attesting witnesses, namely P.W.2 B.Murali Kumar and P.W.4 N.Divya Deepa were examined. In the said Will, it is stated that after the death of the testator S.V.Ramakrishnan, the properties were vested with the Office Trustee or such Office or person appointed by this Court and the said condition was restricted only till the plaintiff attains majority. In order to grant the Letters of Administration, the consent affidavits of the children of the plaintiff, i.e. N.Divya Deepa and N.Dheeraj Kumar, have been filed and marked as Exs.P.-33 and P-34 respectively. Learned counsel for the plaintiff further submitted that the defendants have no right, title or interest over the suit properties and since they have objected for grant of Letters of Administration, O.P.No.367 of 2008 earlier filed by the plaintiff, was converted as T.O.S.No.2 of 2009. The consent affidavits of the wife-S.V.R.Saroja, daughter-R.Vijayalakshim alias R.Vijaya, son-S.V.R.Ramprasad and another daughter R.S.P.Dhanurmathi, of the deceased S.V.Ramakrishnan, were marked as Exs.P-2 to P-5 respectively. The Birth Certificates of R.Vijaya, S.V.R.Ramprasad, the plaintiff-N.Renuka Devi and S.V.R.Dhanurmathi, were marked as Exs.P-7 to 10 respectively. The other son of the deceased S.V.Ramakrishnan, namely the second defendant herein (S.V.Mathaprasad) filed a suit in C.S.No.99 of 1971 against the plaintiff's father and the plaint copy of the said suit in C.S.No.99 of 1971 is marked as Ex.P-12. The copy of the written statement filed by the plaintiff's father in the said suit in C.S.No.99 of 1971 is marked as Ex.P-13. The copy of the decree, dated 30.10.1972 passed in the said suit in C.S.No.99 of 1971 is marked as Ex.P-14.

11. Learned counsel for the plaintiff further contended that the plaintiff's mother S.V.R.Saroja execute a sale deed, dated 01.07.1983 in favour of Lakshmi Builders and M/s.Kumaran Illam and the copy of the same is marked as Ex.P-15. She also executed a sale deed, dated 15.02.1983 in favour of S.Palanisamy and the copy of the same is marked as Ex.P-16. She also executed a sale deed, dated 09.02.1987, in favour of Mrs.Geetha Ravichandran and the copy of the same is marked as Ex.P-17. She further executed a sale deed, dated 21.10.1989 in favour of Padmavathi and the copy of the same is marked as Ex.P-18. The son the second defendant herein, i.e. M.D.Prasad, filed a suit before this Court against S.V.Matha Prasad, the defendant herein and others, in C.S.No.159 of 2002 and the copy of the plaint in C.S.No.159 of 2002 is marked as Ex.P-24. Learned counsel appearing for the plaintiff further submitted that M/s.Lakshmi Builders filed a suit in C.S.No.469 of 1981 before this Court against Mrs.Saroja and others, and the orders, dated 17.03.1982 and 12.02.1997 passed in C.S.No.469 of 1981 are marked as Exs.P-26 and P-27. The third party affidavits filed by the plaintiff, along with O.P., is marked as Exs.P-30 and 38. Learned counsel appearing for the plaintiff further contended that the deceased S.V.Ramakrishnan and S.V.Mathaprasad earlier filed a suit in C.S.No.43 of 1962 before this Court against Buhari and another; the copy of the plaint in C.S.No.43 of 1962 is marked as Ex.P-71 = Ex.D-13; the copy of the decree, dated 10.11.1965 passed in C.S.No.43 of 1962 is marked as Ex.P-72 = Ex.D-14. As against the said decree, dated 10.11.1965 passed in C.S.No.43 of 1962, the appeals in O.S.A.Nos.8 and 9 of 1966 were preferred, which were disposed of by the Division Bench of this Court on 10.05.1972, against which, Civil Appeal in C.A.No.224 of 1974 was preferred before the Supreme Court. The copy of the affidavit filed in I.A.No.2 of 2008 in Civil Appeal No.224 of 1974 filed before the Supreme Court is marked as Ex.P-78. The judgment dated 17.04.1995 passed by the Supreme Court in Civil Appeal No.224 of 1974 is marked as Ex.P-28, with amended cause title therein, which is marked as Ex.P-29. Subsequently E.P.No.48 of 1997 in C.S.No.43 of 1962 was preferred by S.V.Ramakrishna Mudaliar (since deceased) and S.V.Matha Prasad, the second defendant herein, and the order dated 07.07.2000 passed in the said E.P. is marked as Ex.D-6. The counter affidavit filed by the second defendant herein in A.Nos.2872 and 2873 of 2000 in E.P.No.48 of 1997 in C.S.No.43 of 1962

is marked as Ex.P-55. The copy of the order dated 24.08.2000 passed in A.Nos.2872 and 2873 of 2000 in C.S.No.43 of 1962 is marked as Ex.P-56 = Ex.D-18. There are some other suits filed by various parties and the relevant documents in those suits are marked on the side of the plaintiff to substantiate their case.

12. Learned counsel appearing for the plaintiff further submitted that to prove the Will executed by S.V.Ramakrishnan, on the side of the plaintiff, close relatives of the attesting witnesses to the Will, namely P.W.2 B.Muralikumar and P.W.5 Dr.Philip Rajanna Doraiswamy, were examined, who spoke about the signatures of the attesting witness to the Will and its registration. Learned counsel appearing for the plaintiff further stated that there is mention about the Will Ex.P-1 in subsequent documents, in which, the defendants are also parties, and hence, he submitted that the genuineness of the Will cannot be questioned at this stage by the defendants. He further contended that the only defence raised by the defendants in their case is that the Will was obtained by undue influence, which has not been proved by the defendants through evidence. The Will was executed by the testator S.V.Ramakrishnan out of free consent and while he was in a sound and disposing state of mind, and the Will was duly registered before the Registrar Office, and hence, the Will has been proved by the plaintiff by adducing evidence.

13. Learned counsel appearing for the plaintiff also submitted that after the death of the testator S.V.Ramakrishnan on 31.12.1980, the plaintiff has taken steps to execute the Will by filing O.P.No.367 of 2008 before this Court for grant of Letters of Administration, and though there may be some delay, the delay may not defeat the rights of the plaintiff and that, as contended by the learned Senior Counsels appearing for the defendants, the T.O.S. may not be dismissed, since Article 137 of the Limitation Act will not apply to the facts of the present case and in this regard, he relied on the judgment of the First Bench of this Court in O.S.A.Nos.10 and 72 of 2013, dated 07.01.2016. Hence, learned counsel appearing for the plaintiff submitted that the T.O.S. may not be dismissed as time barred. Learned counsel appearing for the plaintiff also submitted that even though it is contended on the side of the defendants that the suit properties were under-valued by the plaintiff and no proper Court fee was filed, the defendants have not proved their case with regard to the market value of the properties by relevant oral or

documentary evidence.

14. For all the above reasons, learned counsel appearing for the plaintiff prayed that the Letters of Administration may be granted in favour of the plaintiff and the T.O.S. may be decreed as prayed for. In support of his submissions, learned counsel for the plaintiff relied on the following decisions:

(a) 2005 (1) CTC 304 (SC) (Iridium India Telecom Ltd. Vs. Motorola Inc.):

"2. This appeal impugns the judgment of the Division Bench of the High Court of Judicature at Bombay in a letters patent appeal holding that the amended provision of Order 8, Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) would not apply to the suits on the original side of the High Court and that such suits would continue to be governed by the High Court Original Side Rules.

...

14. Prior to the establishing of the chartered High Courts by the British Government in 1862, the civil courts in the Presidency of Bombay were governed by the Code of Civil Procedure, 1859 (Act No.VIII of 1859, which received the assent of the Governor General on 22.3.1859). This Act, as its preamble suggests, was 'an Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter' and was not intended to apply to High Courts established by Royal Charter.

15. The First Letters Patent or Charter establishing High Courts was accompanied by a Despatch from the Secretary of State on 14.5.1862, and was in force till revoked by a further Letters Patent on 28.12.1865. The learned counsel drew our attention to para 36 of the Despatch, which explains the purpose of Clause 37 in the First Letters Patent. The said paragraph 36 of the Despatch reads as under:

"36. Clause 37 is a very important one, and there is little doubt, will prove a very salutary provision. It has, therefore, been inserted, although the change introduced is somewhat greater and more substantial than is generally aimed at in this Charter. It extends to the High Court the Code of Civil Procedure enacted by the

legislature of India for the Court, not established by Royal Charter, and thus accomplishes the object so long contemplated of substituting one simple Code of Procedure for the various systems (corresponding to its common law, equity and admiralty jurisdiction) which have been in operation in the Supreme Court since the date of its establishment."

16. It is therefore seen that Clause 37 of the Letters Patent was intended to extend to the High Courts the Code of Civil Procedure enacted by the Legislature of India for the Courts other than the Courts established by the Royal Charter. The intention was to substitute one simple Code of Procedure for the various systems which had been in operation in the Supreme Court since the date of its establishment.

17. Clause 37 of the Letters Patent of 1865, which deals with "civil procedure and regulation of proceedings", reads as follows:

"37. And we do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdictions, respectively:

Provided that the said High Court shall be guided in making such rules and orders as far as possible, by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General-in-Council, and being Act No.VIII of 1859, and the provisions of any law which has been made amending or altering the same, by competent legislative authority for India."

(Letters Patents of the three High Courts, namely, Calcutta, Bombay and Madras are identically worded.)

18. The Code of Civil Procedure, 1877 (Act No.X of 1877), which received the assent of the Governor General on 30.3.1877, and was thereafter brought into force with effect from 1.10.1877, was "an Act to consolidate and amend the laws relating to the procedure of the Court of Civil Judicature". Part IX of this Act

contained special rules relating to the Chartered High Courts. Chapter XLVIII of the Act applied only to the Chartered High Courts. Section 632 of the Civil Procedure Code of 1877, in express words, provided: "except as provided in this Chapter the provisions of this Code apply to such High Courts". Section 638 was the exception to the general rule and provided as under:

"The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, Sections 16 and 17, Sections 54, Clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), 261, and so much of Section 409 as relates to the making of a memorandum; and Section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Nothing in this Code shall extend or apply to any High Court in the exercise of its jurisdiction as an Insolvency Court."

19. The Legislature recognised the special role assigned to the chartered High Courts and exempted them from the application of several provisions of the Code in the exercise of their ordinary or extraordinary civil jurisdiction for the simple reason that those jurisdictions were governed by the procedure prescribed by the rules made in exercise of the powers of the Chartered High Courts under Clause 37 of the Letters Patent. Interestingly, Section 652 of this Act itself empowered the High Courts to make rules 'consistent with this Code to regulate any matter connected with the procedure of the Courts of Civil Judicature subject to its superintendence', suggesting that consistency with the Code was a sine qua non only when making rules for the subordinate Courts.

... ...

32. There cannot be any doubt about the principle of harmonious construction. However, what confronts us is not a mere question of two independent provisions of the CPC being in conflict. The provisions of the CPC, which we have extracted, and the historical development of the different sections to which we have referred, do not suggest a situation of mere conflict. They seem to suggest that, throughout,

the Legislature had made a distinction between the proceedings in other civil Courts and the proceedings on the Original Side of the Chartered High Courts. This distinction was made for good historical reasons and it had continued unabated, as we have noticed, through the consolidating Acts, and continued unaffected even through the last amendment of the CPC in the year 2002. In the face of this body of evidence, it is difficult to accede to the contention of the appellant that the force of the non-obstante clause is merely declaratory and not intended to operate as a declared exception to the general body of the CPC.

...

35. Reference was made to A.G.Varadarajulu and Anr. Vs. State of Tamil Nadu and Ors., AIR 1998 SC 1388, at para 16. This judgment merely followed the observations made in Aswini Kumar (supra) - Aswini Kumar Ghosh Vs. Arabinda Bose,1953 SCR (1) 377 and Madhav Rao Scindia Vs. Union of India, 1971 (1) SCC 85 at p.139. There is no doubt that where the non obstante clause is widely worded, "a search has, therefore, to be made with a view to determining which provision answers the description and which does not". The historical development of the law suggests that the non obstante clause in Section 129 is intended to bypass the entire body of the Code so far as the rules made by the Chartered High Court for regulating the procedure on its Original Side are concerned.

...

47. Finally, it was argued by Mr.Jethmalani that the Letters Patent, and the rules made there under by the High Court for regulating its procedure on the Original Side, were subordinate legislation and, therefore, must give way to the superior legislation, namely, the substantive provisions of the Code of Civil Procedure. There are two difficulties in accepting this argument. In the first place, Section 2(18) of the CPC defines "rules" to mean "rules and forms contained in the First Schedule or made under Section 122 or Section 125". The conspicuous absence of reference to the rules regulating the procedure to be followed on the Original Side of a Chartered High Court makes it clear that those rules are not "rules" as defined in the Code of Civil Procedure, 1908. Secondly, it is not possible to accept the contention that the Letters Patent and rules made there under, which are

recognised and specifically protected by Section 129, are relegated to a subordinate status, as contended by the learned counsel. We might usefully refer to the observations of the Constitutional Bench of this Court in P.S.Santhappan (Dead) by LRs. Vs. Andhra Bank Ltd. and Ors., JT 2004 (8) SC 464. With reference to Letters Patent, this is what the Constitution Bench said:

"148. It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent, but then which legislation is not subject to amendment or alteration? CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in Vinita Khanolkar's, JT 1997 (9) SC 490 case and Sharda Devi's, JT 2002 (3) SC 43 case a Letters Patent is the Charter of the High Court. As held in Shah Babulal Khimaji's, 1982 (1) SCR 187 case a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the concerned High Court. Civil Procedure Code is a general law applicable to all Courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A."

(b) 2014 (4) SCC 434 (R.Unnikrishnan Vs. V.K. Mahanudevan):

"19. It is trite that law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of the judgments pronounced by the courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of the Constitution Bench of this Court in Daryao Vs. State of U.P. (AIR 1961 SC 1457) where the Court succinctly summed up the law in the following words: (AIR p.1462, paras 9 and 11)

"9. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

* * *

11. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.

20. That even erroneous decisions can operate as res judicata is also fairly well settled by a long line of decisions rendered by this Court. In Mohanlal Goenka Vs. Benoy Kishna Mukherjee (AIR 1953 SC 65) this Court observed: (AIR p.72, para 23)

"23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'. "

21. Similarly, in State of W.B. Vs. Hemant Kumar Bhattacharjee (AIR 1966 SC 1061 : 1966 Cri.L.J. 805) this Court reiterated the above principles in the following

words: (AIR p.1066, para 14)

"14. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

22. The recent decision of this Court in Kalinga Mining Corpn. Vs. Union of India (2013 (5) SCC 252 : 2013 (2) SCC (Civ) 797) is a timely reminder of the very same principle. The following passage in this regard is apposite: (SCC pp.267-68, para 44)

"44. In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision."

23. In Mathura Prasad Bajoo Jaiswal Vs. Dossibai N.B.Jeejeebhoy (1970 (1) SCC 613) this Court held that for the application of the rule of res judicata, the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue if one purely of fact decided in the earlier proceedings by a competent court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be reopened. That is true even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only exception to the doctrine of res judicata is "fraud" that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any judgment, decree or order a nullity and non est in the eye of the law. In A.V.Papayya Sastry Vs. State of A.P. (2007 (4) SCC 221), "fraud" was defined by this Court in the following words: (SCC pp.231-32, para 26)

"26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another.

In fraud one gains at the loss [and cost] of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of finality of litigation cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

(c) 2015 (1) CTC 791 (SC) (Sati Paradesi Samadhi and Philliar Temple Vs. M.Sankuntala (D) tr. L.Rs):

16. The controversy pertaining to the provisions contained in Order 14 Rule 2, had come up for consideration before this Court in Major S.S.Khanna Vs. Brig.F.J.Dillon, AIR 1964 SC 497 : 1964 (4) SCR 409, wherein it has been ruled thus:

"Under Order 14, Rule 2, where issues both of law and of fact arise in the same Suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole Suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a Suit on mixed issues of law and fact as Preliminary issues. Normally all issues in a Suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the Suit".

...

18. In Ramesh D.Desai and others Vs. Bipin Vadilal Mehta and others, 2006 (5) SCC 638, while dealing with the issue of limitation, the Court opined that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed

in sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a Preliminary issue. In the said Judgment the Court opined as follows:

"13. Sub-rule (2) of Order 14, Rule 2, C.P.C., lays down that where issues both of law and of fact arise in the same Suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the Suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S.Khanna Vs. Brig.F.J.Dillon and it was held as under: (SCR p.421)

"Under Order 14, Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same Suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole Suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a Suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a Suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the Suit".

Though there has been a slight amendment in the language of Order 14, Rule 2, C.P.C., by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a Suit on mixed issues of law and fact as a Preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue".

19. In the case at hand, we find that unless there is determination of the fact which would not protect the Plaintiff under Section 10 of the Limitation Act the Suit cannot be dismissed on the ground of limitation. It is not a case which will come

within the ambit and sweep of Order 14, Rule 2, which would enable the Court to frame a Preliminary issue to adjudicate thereof. The learned Single Judge, as it appears, has remained totally oblivious of the said fact and adjudicated the issue as if it falls under Order 14, Rule 2. We repeat that on the scheme of Section 10 of the Limitation Act we find certain facts are to be established to throw the lis from the sphere of the said provision so that it would come within the concept of limitation. The Division Bench has fallen into some error without appreciating the facts in proper perspective. That apart, the Division Bench, by taking recourse of Articles 92 to 96 without appreciating the factum that it uses the words "transferred by the trustee for a valuable consideration" in that event the limitation would be twelve years but in the instant case the asseveration of the Plaintiff is that the Trustee had created three Settlement Deeds in favour of his two daughters and a grand-daughter. The issue of consideration has not yet emerged. This settlement made by the father was whether for consideration or not has to be gone into and similarly whether the property belongs to the Trust as Trust is understood within the meaning of Section 10 of the Limitation Act has also to be gone into. Ergo, there can be no shadow of doubt that the Issue No.1 that was framed by the learned Single Judge was an issue that pertained to fact and law and hence, could not have been adjudicated as a Preliminary Issue. Therefore, the impugned Order is wholly unsustainable."

(d) 2014 (6) CTC 80 (SC) (Leela Rajagopal Vs. Kamala Menon Cocharan):

"10. A Will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the Court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the

repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.

11. In the present case, a close reading of the will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reasons for exclusion of the sons is apparent from the will itself. Insofar as the place of execution is concerned, the inconsistency appearing in the verification filed along with the application for probate by PW 3 and the oral evidence of the said witness tendered in court is capable of being understood in the light of the fact that the verification is in a standard form (Form No. 55) prescribed by the Madras High Court on the Original Side, as already noticed. Besides, in the facts of the present case the participation of the first respondent in the execution and registration of the Will cannot be said to be a circumstance that would warrant an adverse conclusion. The conduct of the first respondent in summoning her friend (PW.3) to be an attesting witness and in taking the testator to the office of the Sub-Registrar should, again, not warrant any adverse conclusion. It also cannot escape notice that the Will dated 11.1.1982 is identical with the contents of the earlier Will dated 28.12.1981. Insofar as the execution of the Will dated 28.12.1981 and its registration is concerned no active participation has been attributed to the first respondent. The change of the Attesting Witnesses and the non-examination of Seetha Padmanabhan, who had attested the second Will dated 11.1.1982 has been sufficiently explained.

...

13. All the unusual and allegedly suspicious circumstances being capable of being understood in the manner indicated above, we cannot find any fault with the conclusions reached by the High Court while reversing the judgment of the learned Trial Court."

(e) AIR 1974 SC 1999 (Surendra Pal and others Vs. Dr.(Mrs.)Saraswati Arora and another):

"9. The Appellate Court agreeing with the trial Judge held that Respondent 1 was merely present at the time of the execution of the Will and did not have anything to

do with its execution. The case of Appellant 1 was that as a condition of the marriage arrangement, the Will was executed and because of that Bhim Sain made no provision for the maintenance of his aged mother or for the maintenance and marriage of his youngest daughter Rita who was then studying. Instead he gave away the entire property to Respondent 1 which is a suspicious circumstance and raises an inference of undue influence. This submission was clearly negatived, and on the evidence there can be no gainsaying the fact that the conclusions to which both the Courts have come to are unassailable. It is not for us to fathom the motivations of a man. His actions and reactions are unpredictable as they depend upon so many circumstances. There is, however, always some dominant and impelling circumstance which motivates a man s action though in some cases even a trivial and trifling cause impels him to act in a particular way which a majority of others may not do. At times psychological factors and the frame of mind in which he is, may determine his action.

... ...

14. Apart from general considerations emerging from the nature of a Will and the circumstances which not infrequently surround the execution of it, there are other matters which are peculiar to the times and the society and perhaps even to the person making the Will and his or her family. Inferences arising from relationships between a testator and a legatee are certainly so dependent upon the peculiarities of the society or community to which the testator and the legatee belong, their habits and customs, their values, their mores, their ways of thinking and feeling, their susceptibilities to particular kinds of pressures, influences, or inducements that it seems very difficult to reduce them to a general rule applicable at all times and everywhere so as to raise a presumption of undue influence from a particular type of relationship. The only kinds of relationship giving rise to such presumptions are those contemplated in Section 111 of the Evidence Act. Any other presumption from a relationship must, to be acceptable, be capable of being raised only under Section 114 of the Evidence Act. Such presumptions of fact are really optional inferences from proof of a frequently recurring set of facts which make a particular inference from such facts reasonable and natural. If a particular situation arising from a set of facts, which may raise a presumption elsewhere, is exceptional or

unusual here, there could be no question here of applying a presumption arising from a common or natural course of events. A suggested inference of undue influence would then be a matter of proof on the particular facts of the case before the Court. This, we think is the correct legal position here.

15. The case before us could certainly not fall within Section 111 of the Evidence Act. There is no presumption of law or fact in this country that a woman to whom a man is engaged to be married is in a position to dominate his will so as to over-ride his own real intentions. It is not mere influence, but undue influence, which has to be proved by the party which sets up such a case. We think that a plea of undue influence, where set up, is a special plea. Section 103 of the Evidence Act places the burden of substantiating such a plea on the party which sets it up.

... ...

17. In the instant case, there was no suggestion that the testator was feeble minded or so completely deprived of his power of independent thought and judgment as to faithfully carry out the wishes of the lady to whom he became engaged and then married. In fact, it appears that it was he who might have offered the inducement voluntarily to the lady concerned to agree to share his life. Upon the facts of such a case, no presumption of the kind urged before us on behalf of the appellant could, in our opinion reasonably arise in any country, at any time, in any society.

... ...

20. We have also no doubt that the Will was genuine. All the formalities required were fully satisfied, it was executed by the testator in a sound disposing mind and it was duly attested as required by law."

(f) AIR 1955 SC 363 (Naresh Charan Das Gupta v. Paresh Charan Das Gupta and another):

"5. The facts so far as they are material for this issue, may now be stated. The testator was a police officer and retired in 1927 as Deputy Superintendent of Police. Paresh Charan, the elder son, was married in 1925, and lived all along with

his parents with his wife and children. Nirmala, the wife of the testator, died in 1929, and thereafter it was the wife of Paresh Charan that was maintaining the home. Naresh Charan studied up to I.A., but in 1920 discontinued his studies and got into employment in the workshop of Tata and Co., at Jamshedpur on a petty salary; and the evidence is that thereafter he was practically living apart from the family. In 1928 he married one Shantimayi, who was a widow having some children by her first husband. She belonged to the Kayastha caste, whereas Naresh Charan belonged to the Baid caste. The testator was strongly opposed to this intercaste marriage, and did his best to stop it but without success. The correspondence that followed between the appellant and his father during this period clearly shows that the father felt very sore over this alliance, and wrote that it could not pain him even if his son died.

6. With this background, we may turn to the will. The relevant recitals therein are as follows:

"My younger son Sri Naresh Charan Das Gupta is behaving badly with me and without my knowledge and consent he has married a girl of a different caste and she has given birth to two female children and one male child. In these circumstances my said son Sri Naresh Charan Das Gupta and his son Sreeman Arun Gupta and the two daughters or any other son or daughter who may be born to him, will not be entitled to perform my sradh or to offer me pindas. For all these reasons I deprive my second son Sri Naresh Charan and his son Sreeman Arun Gupta and his two daughters and any other sons or daughters who may be born to him as well as Naresh's wife Sreemati Santi of inheritance from me and from all my movable and immovable properties, ancestral as well as self-acquired. They shall not get any share or interest or possession in any of my aforesaid properties".

It is not disputed that these recitals accord with what the testator had expressed in the correspondence at the time of the marriage and for some years thereafter. But it is argued that since then, more than a decade had passed before the will was executed, and that during this period the natural affection of the testator for his son had reasserted itself, that he had forgiven and forgotten the past, and that when

the will was actually executed, the recitals above extracted did not correctly reflect the then mind of the testator.

6a. We have been taken through the entire correspondence that passed between the testator and the appellant and the members of his family. It shows that the testator was solicitous about the welfare of the appellant, and was enquiring about his health and sending him on occasions medicines; that he was affectionately disposed towards his children and was sending them presents of cloth; that latterly he had so far modified his attitude towards the wife of the appellant as to invite her and her children to Calcutta; that he himself stayed with them for some time at Jamshedpur and was giving advice to the appellant on matters connected with his employment. It was argued that there was thus a gradual change of heart on the part of the father towards the appellant and the members of his family, that the recitals in the will could not be reconciled with this change of attitude, and that they must have been inspired by the first respondent.

We are unable to agree. It is one thing for a father who feels that he has been wronged by a disobedient son to wish him well in life, and quite another thing to give him any of his properties. In the whole of the correspondence which has been read to us, there is nothing to suggest that he wanted the appellant to share in the estate. On the other hand, there are indications that even when the appellant was in financial difficulties, the testator considered that he was under no sort of obligation to come to his help. Vide Exs.5(c) and C(1). It may be mentioned that after making the will on 28-11-1943, the testator continued to correspond with the appellant and the members of his family precisely in the same terms as before. Vide Exs.B(2), C(4) and A(10). That shows that the two currents of natural affection and settlement of properties flowed in distinct channels, and that the change in the course of the one had no effect on the direction of the other.

7. The testator, it is clear from the correspondence, was a man of strong will, determined and unshakable in his resolutions. He wrote of himself in Ex.C(34) that "I am one-third conservative, one-third liberal and one-third autocratic". He was very solicitous about the family prestige and reputation, and felt deeply hurt when his son entered into a marriage which was viewed by his community with

disfavour. In Ex.6(c) he wrote,

"You broke our hearts for a woman who has no right to be in my house." And as late as 25-12-1941 he wrote to the appellant that if his wife and children came to live with him "they must prepare themselves to meet uncalled for taunts and unpleasant enquiries which may be made by our near and distant village relations in our society who will come to see us". (Vide Exhibit C(37)).

There cannot, therefore, be any doubt that the testator was all along smarting under a sense of social humiliation by reason of the inter-caste-marriage, and that the recitals in the will were manifestations of a sore in his heart which had remained unhealed to the last.

8. It was also argued that the dispositions in the will were unnatural in that the appellant had been practically disinherited and his children altogether ignored. This by itself cannot lead to any inference of undue influence on the part of the first respondent. Having regard to the character of the testator and his feelings in the matter it is not a matter for surprise that he should have cut off the appellant with a small legacy. It must also be mentioned that the net value of the assets as given in the Probate petition is Rs.23,865-10-9, and if the other legacies and charges are deducted, what was bequeathed to the first respondent cannot be said to be very considerable. It also appears that at that time his salary was Rs.60/- per mensem and that he had a number of children, whereas the appellant is stated to have had a basic salary of Rs.250/- per mensem then. Respondent 1, his wife and children have all along been dependents of the testator, whereas the appellant had lived apart from him from 1920. And it is not unnatural for the testator so to order the distribution of his estate as to secure the continuance of the existing state of affairs. The terms of the will, therefore, cannot be relied on as intrinsic evidence of undue influence, as contended for by the appellant.

9. Then there is the evidence of Indira, the daughter of the testator, which was taken on commission. She deposed that the testator had told her that there were troubles in the house, that the elder son had objection to stay with the younger one, "because if they live together, there will be social trouble regarding his daughter's marriage", and that he therefore wanted to make a will She went on to

add that the father subsequently wanted to alter the will and sent for her repeatedly for discussions, but that she generally excused herself, because she did not like to intervene in the matter, and that on those occasions, he told her, "At present this will stand, but I want to modify it in future".

Indira also deposed that the first respondent and his wife used to tell the testator that there was no change in the conduct of the appellant, that he was extravagant in his habits and incurred debts, and that he had taken away some articles. We do not consider that it is safe to act on this evidence. It is clear from Ex.1 that Indira and her husband had taken sides with the appellant as against the first respondent, and wrote to him that in spite of the will the appellant "should have his share as early as possible in order to avoid further complication", though it may be noted that they insisted on their rights under the will. Stripped of all its embellishments, the evidence of Indira, if true, comes only to this that the first respondent told his father that he could not live under the same roof with his brother, and that in view of that attitude, the testator gave no share to the appellant in the house. We are unable to see any undue influence in this. The first respondent was entitled to put forward his views in the matter, and so long as the ultimate decision lay with the testator and his mental capacity was unimpaired, there can be no question of undue influence.

10. It is elementary law that it is not every influence which is brought to bear on a testator that can be characterised as "undue". It is open to a person to plead his case before the testator and to persuade him to make a disposition in his favour. And if the testator retains his mental capacity, and there is no element of fraud or coercion it has often been observed that undue influence may in the last analysis be brought under one or the other of these two categories the will cannot be attacked on the ground of undue influence. The law was thus stated by Lord Penzance in 'Hall Vs. Hall (1868) 1 P and D 481 at p.482 (C):

"But all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, these are all legitimate and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the

hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led, but not driven; and his will must be the offspring of his own volition, and not the record of some one else's."

Section 61 of the Indian Succession Act (Act 39 of 1925) enacts that,

"A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void."

Illustration (vii) to the section is very instructive, and is as follows:

"A, being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B."

(g) 2013 (6) CTC 471 (Madras High Court) (K.Karthik s/o. K.Kalaivanan and another Vs. Jayanthi Iyengar and others):

"5. The cause of action for filing the present Application is as follows:

"6. I submit that during trial in the abovesaid Suit, the Applicants herein came to know that after the death of Mr. P.D. Rajagopalan, the First Respondent herein (Petitioner in the above O.P.No. 842 of 2012) has forged Mr.P.D.Rajagopalan s signature and has created a Will, as if he has bequeathed the abovesaid property in her favour.

7. On enquiries I have come to know that the First Respondent herein filed the above O.P.No. 842 of 2012 seeking grant of Letters of Administration with respect of a Will, alleged to have been executed by the abovesaid P.D. Rejagopalan on 16.6.2000 in favour bequeathing the abovesaid property in her favour.

8. I submit that the Will dated 16.6.2000 in respect of which the First Respondent herein has applied for Letters of Administration, is not a genuine one. I submit that the said Will dated 16.6.2000 is a forged one. Therefore, the above O.P.No. 842 of 2012 is liable to be dismissed.

9. I submit that under the facts and circumstances stated above, being absolute owners of the property covered under the alleged Will, the Applicants herein are proper and necessary parties to the above O.P.No.842 of 2012. It is therefore just, proper and necessary that the Applicants herein be impleaded as Respondents Nos. 5 and 6 in the above O.P.No. 842 of 2012 as otherwise they will be put to irreparable loss and injury."

Therefore, the present Application is filed praying to implead the Petitioner in the Original Petition.

6. This is resisted by the respondent herein and the Petitioner in the Original Petition, who has filed a detailed Counter, which of course, upto para-18 is not relevant for repudiating the claim on facts which is not required for the disposal of the present Application. Para-19 of the Counter Affidavit is relied upon by K.V. Babu, learned Counsel for the Respondent that no caveatable interest is there for the impleading Applicants and, therefore, the Application has to be rejected. Learned Counsel for the Respondent relied upon the decision of the Supreme Court in Kanwarjit Singh Dhillon Vs. Hardayal Singh Dhillon and Others, 2008(1)CTC 80 (SC) : 2007(11)SCC 357, wherein the Hon ble Supreme Court, while relying upon its earlier decision in Chiranjilal Shrilal Goenka Vs. Jasjit Singh and others, 1993 (2) SCR 454, and pleaded that in a probate, the Court in exercise of jurisdiction under the Indian Succession Act is not competent to determine the question of title to the Suit property and for other issues relating to title. In the said decision, the Supreme Court has held as follows:

"11. In Chramyilal Shrilal Goenka Vs. Jasjit Singh and others, 1993 (2) SCC 507, this Court while upholding the above views and following the earlier decisions of this Court as well as of other High Courts in India observed in Paragraph 15 at page 515 which runs as under:

"In Ishwardeo Narain Singh Vs. Smt.Kanta Devi (AIR 1954 SC 280) this Court held that the Court of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore, the only issue in a Probate proceeding relates to the genuineness and due execution of the Will and the Court itself is under duty to determine it and perverse the original Will in its custody. The Succession Act is a self-contained code insofar as the question of making an Application for probate, grant or refusal of probate or an Appeal carried against the decision of the Probate Court. This is clearly manifested in the fascicule of the provisions of the Act. The Probate proceedings shall be conducted by the Probate Court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the Executor and the valid execution of the Will. Thus, it does no more than establish the factum of the Will and the legal character of the Executor. Probate Court does not decide any question of title or of the existence of the property itself." "

(h) 2005 (1) LW 455 (Division Bench of Madras High Court) (Janaki Devi Vs. R.Vasanthi and others):

"27. The learned counsel for the appellant submitted that Order 25 Rule 9 of Madras High Court Original Side Rules, is not complied with in this case, and the non explanation of the delay, with materials should be construed as one of the unavoidable circumstances, to cast shadow upon the Will, to eclipse the same. Order 25 Rule 9 of the Madras High Court Original Side Rules says:

"In any case where probate or letters of administration is for first time applied for after the lapse of three years from the death of the deceased, the reason for the

delay shall be explained in the petition."

In the case on hand, it cannot be said, that this requirement is not complied with, since paragraph-7 of the petition gives some explanation, for the delay. The submission of the learned senior counsel for the appellant, that during the relevant period viz., from September 1984 to June 1989, the plaintiff/first respondent could not have been in bed rest, since she was attending the Court in the connected proceedings, fails to inspire us, to reject the explanation offered, considering the fact that the petitioner had proclaimed and propounded the Will, as and when occasion had arisen for her to do so. Admittedly, this petition or plaint has been filed, after three years from the date of death of the testator, since she died on 22.6.1981. If the plaintiff had been silent, not even whispering about the Will, when occasion had arisen, then the inaction on the part of the plaintiff for more than three years in not taking the steps, to probate the Will, could be viewed with suspicion. In this case, admittedly, on the basis of the Will, probably thinking that the Will need not be probated, a suit has been filed by the petitioner, before the District Munsif Court, Villupruam against one Kannan, who was the tenant of the property, for certain reliefs and in those proceedings, this Will was exhibited as Ex.A1, thereby showing, the plaintiff had taken action, immediately, to preserve the property, over which right has been given, indicating that the plaintiff had no intention, to suppress the Will or conceal the same, from the eyes of others. True, ultimately the suit has been dismissed on the ground, that the Will could not be acted upon, as it was not probated and that is why the present case is filed, though not immediately, but within the reasonable time, explaining the delay. As held by the Division Bench of this Court, in Ammu Balachandran's case (Ammu Balachandran Vs. O.T.Joseph -- AIR 1996 Madras 442), if the execution of the Will is proved, the delay in taking steps to probate the Will, will not loom large, since Order 25 Rule 9 of Madras High Court Original Side Rules has not prescribed any period of limitation and probably, it aims to give explanation alone.

.. ..

29. For the reasons which we are going to assign hereunder, the execution of the Will is duly proved and therefore, on the ground of the delay in filing the petition for

probate alone or letters of administration, entertaining indelible suspicion, a doubt could not be entertained, as if the Will was fabricated by the plaintiff. Hence, this defence deserves rejection."

(i) 2014 (15) SCC 578 (Ved Mitra Verma Vs. Dharam Deo Verma):

"12. It is not a fact that the will and its contents had come to light for the first time after 17 years when the application was filed before the learned trial court by the present respondent. From the materials on record before the High Court, it is evident that there was a family dispute between the parties which was resolved by the local Durbar and the proceedings thereof were recorded in Ext.10. In the said document, there is a reference to the "deed of agreement" made by the deceased father in 1974 on the basis of which the appellant was found entitled to be in possession of the property in question. The aforesaid "deed of agreement" is, in fact, the will dated 20-11-1974.

... .

14. All the alleged suspicious circumstances surrounding the execution of the will being capable of being understood in the manner indicated above and the requirement of Section 69 of the Evidence Act, 1872 having been satisfied by the evidence of PW 3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently, and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs."

(j) 2014 (2) CTC 199 (SC) = 2014 (16) SCC 125 (Surjit Kaur Gill Vs. Adarsh Karu Gill):

"10. With respect to these submissions, Mr.Divan pointed out that in fact there is a clear writing of Respondent 1 herein executed on 12-2-1991 which clearly states, amongst others, in Para (d) that she will not claim any tenancy right or charge on the abovereferred property. In Para (b) of that writing she agreed to render the accounts with respect to the rental income received from 1-1-1980 to 30-11-1990. In Para (c) of that writing she states that with respect to the two mortgages

redeemed in her name, she will not claim any charge as the amounts paid for redeeming the said mortgages were paid from the estate of Smt.Abnash Kaur. Mr.Divan states that after executing this writing, the disputes between the parties were supposed to get settled, but then unfortunately it did not happen. Respondent 1 started construction on the particular property in her own right. This having happened in 1992, the original plaintiff was constrained to file the suit for the partition of the property belonging to Smt.Abnash Kaur. Smt.Abnash Kaur having made a will about her property, the original plaintiff had to see to it as the administrator of the will that the property is distributed in accordance therewith. This being the position, in his submission it is Article 58 which is the relevant article for all these prayers, which provides for a period of three years when the right to sue first accrues. In the present case, it will be when the dispute arose because of the conduct of Respondent 1 herein. The issue of limitation is always a mixed question of facts and law, and therefore, it could not be held that no case was made out for proceeding for a trial. Mr.C.A.Sundaram submitted that Respondent 1 disputed the writing dated 12-2-1991 and it had to be forensically tested. This submission all the more justifies that the trial had to proceed. For deciding an application under Order 7 Rule 11, one has to look at the plaint and decide whether it deserved to be rejected on the ground raised. In our view, the view taken by the Division Bench is clearly erroneous. The appeal is therefore allowed and the judgment and order of the Division Bench is set aside. The application made under Order 7 Rule 11 moved by Respondent 1 herein will stand rejected. We may however clarify that all the observations herein are only for the purpose of deciding this appeal."

(k) 2010 (2) SCC 162 (Suresh Kumar Bansal Vs. Krishna Bansal):

"14. Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural

heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law.

15. It is true that in the impugned order, the High Court has made it clear that the finding regarding genuineness of the will was made only for the purpose of deciding the application for impleadment filed at the instance of the appellant. But, in our view, if at this stage, the appellant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the respondent tenant, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit premises, but if ultimately the probate of the alleged will of the deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff.

... ... 17. That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the will which is yet to be probated, in our view, the best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the will alleged to have been executed by the deceased plaintiff.

18. At the same time, it is clear that in case the will of the deceased plaintiff is found not to be genuine and probate is not granted, the court shall proceed to

grant the eviction decree in favour of Respondent 1 and not in favour of the appellant. It is well settled that in the event, the will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the respondent tenants from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff.

19. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict.

20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.

21. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the will of the deceased plaintiff so that all the legal representatives, namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit.

22. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged will of the deceased plaintiff at this stage of the proceedings.

23. Before parting with this judgment, it is necessary to consider the decision of this Court in Jaladi Suguna Vs. Satya Sai Central Trust (2008 (8) SCC 521) cited by the learned Senior Counsel for the appellant. In Jaladi Suguna, this Court held that the intestate heir (husband) and the testamentary legatees (nieces and nephews), seeking impleadment as the heirs of the deceased respondent in an appeal have to be brought on record before the court can proceed further in the appeal. Furthermore, in that decision it was also held that a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative.

24. In view of the aforesaid discussions and in view of the decision in Jaladi Suguna, we are also of the view that in an eviction proceeding, when a legatee under a will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of the Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the Probate Court for a decision whether the will was genuine or not.

25. For the reasons aforesaid, we are of the view that the High Court as well as the trial court had acted illegally and with material irregularity in the exercise of their jurisdiction in not impleading not only the natural heirs and legal representatives of the deceased plaintiff but also the appellant who is claiming his impleadment on the basis of an alleged will of the deceased plaintiff."

(l) 2012 (6) SCC 430 (A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam):

Entire journey of a Judge is to discern the truth

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh Vs. State of U.P. (2010 (2) SCC 114 : 2010 (1) SCC (Civ) 324) observed that: (SCC p.116, para 1)

"1. Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system."

.. ...

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered.

Framing of issues

30. Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order 10 CPC enables the court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order 10 reads as under:

"2. Oral examination of party, or companion of party. (1) At the first hearing of the suit, the court

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2)-(3) * * * "

It is a useful procedural device and must be regularly pressed into service.

.. ...

32. If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of the witnesses and final arguments in the case.

... ...

43. On the facts of the present case, the following principles emerge:

43.1. It is the bounden duty of the court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8. The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour."

(m) 2008 (14) SCC 754 (Babu Singh Vs. Ram Sahai):

"16. Section 69 of the Act (Evidence Act) reads, thus:

"69. Proof where no attesting witness found. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."

17. It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indicated in Section 69 i.e. by examining witnesses who were able to prove the handwriting of the testator or executant. The burden of proof then may be shifted to others.

18. Whereas, however, a will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act and Section 68 of the Act, in the event the ingredients thereof, as noticed hereinbefore, are brought on record, strict proof of execution and attestation stands relaxed. However, signature and handwriting, as contemplated in Section 69, must be proved."

(n) 2012 (8) MLJ 701 (Madras High Court) (R.Sarala Vs. K.S.Mohan):

"15. Per contra, Mr.R.Parthasarathy, learned counsel for the respondents placed reliance upon Clause 37 of the Letters Patent, where this court has been given power to frame rules for regulating its own procedure and in respect of the civil procedure. Insofar as the testamentary proceedings are concerned, it is governed by Order 25 of the O.S. Rules. Order 25 Rule 9 though states that if a petition for letters of administration was presented before this court after a lapse of three years from the date of the death of the deceased, the reason for the delay has to be explained in the petition. Therefore, he argued that Section 213 of the Indian Succession Act read with Article 137 of the Limitation Act will not apply as the petition has been presented under the rules framed under the Letters Patent.

16. In this context, he placed reliance upon a judgment of the Supreme Court in Iridium India Telecom Ltd. Vs. Motorola Inc., AIR 2005 SC 514 : 2005 (2) SCC 145 : 2005 (2) MLJ 97 and referred to the following passages found in paragraphs 28, 29, 30 and 44, which reads as follows:

"28. It appears to us that this was the real reason why a distinction was drawn between the proceedings in original jurisdiction before the chartered High Courts and those in other courts. For historical reasons this distinction was maintained right from the time the Letters Patent was issued, and has not been disturbed by

the Code of Civil Procedure, 1908, despite the amendments made in CPC from 1976 to 2002.

29. The learned counsel for the appellant referred to the speech of the Law Member while introducing the Code of Civil Procedure Bill, 1907, which ultimately resulted in the Code of 1908. Our attention was drawn to the proceedings of the Council of the Governor General of India (published in the Gazette of India dated 7-9-1907, pp. 134 to 143). The only relevant portion is the portion at p. 141 where the Law Member, who introduced the Bill, referring to clauses 145 and 148 to 150 contained in Parts X and XI of the Bill, explained the need as under:

"I have already explained the nature of the rule-making power which is dealt with in Part X of the Bill and in regard to Part XI (miscellaneous), I would only call attention to Clauses 145 and 148 to 150, which widen the discretion of Courts. They confer powers to enlarge time and to amend written proceedings, and they recognise the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In these ways greater elasticity will, it is hoped, be of benefit."

30. Far from advancing the case of the appellant, the speech of the Law Member, while introducing the Bill, suggests that it was thought necessary that the inherent powers of the Court to make appropriate orders, as may be necessary for the ends of justice or to prevent abuse of the process of the Court, was retained for the purpose of greater elasticity.

44. The Full Bench of the High Court of Calcutta in Manickchand Durgaprasad Vs. Pratabmull Rameswar - AIR 1961 Calcutta 483, had occasion to consider this very contention with regard to Clause 37 of the Letters Patent and observed: (AIR p. 489, para 13)

"The restriction upon the power of the Court as contained in the proviso to Clause 37 of the Letters Patent is that the rules framed under that clause should, "as far as possible" be in conformity with the provisions of the Code of Civil Procedure. This restriction as the phrase "as far as possible" indicates is merely directory. The provisions of the Code of Civil Procedure are intended for the purpose of guidance

of this Court in framing rules under Clause 37 of the Letters Patent. Consequently, if any rule framed by the High Court under Clause 37 be inconsistent with or confers any additional power besides what is granted by the Code of Civil Procedure, the rule framed under Clause 37 will prevail over the corresponding provisions of the Code of Civil Procedure."

This we think is the correct view to be taken in interpreting the words "as far as possible" in Clause 37 of the Letters Patent. This interpretation would be consistent with the amplitude of the words used in Section 129 CPC by which the High Court is empowered to make rules "not inconsistent with the Letters Patent to regulate its own procedure in the exercise of its original jurisdiction as it shall think fit".

In view of the above, he contended that the argument based upon limitation will have no application to the case on hand.

17. He also stated that for the purpose of rejecting a petition in terms of the power under Order 7 Rule 11(d), the Courts are slow in applying the said provisions for rejecting the petition on the ground of limitation as it is the question involved in both question of law and facts. For this purpose, he referred to a judgment of the Supreme Court in Popat and Kotecha Property Vs. State Bank of India Staff Assn., reported in 2005 (7) SCC 510 and a reference was made to the following passage found in paragraph 25, which reads as follows :

"25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others (supra) the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred

by any law to attract application of Order 7 Rule 11. This is not so in the present case."

In the light of the above, he sought for dismissal of the two applications. He further contended that it is only when a citation is issued on the original petition, the question as to whether it could be tried as a petition for letters of administration or to be converted into T.O.S., has to be considered.

18.The stand taken by the respondents is well founded. This court do not incline to accept the contentions of the applicants in rejecting the O.P. even before the matter could be taken up for appropriate consideration after due notice to the respondents. Hence both applications will stand dismissed. No costs. Post the O.P. before the learned Master for compliance regarding service."

(o) AIR 1989 Madras 111 (Division Bench of Madras High Court) (Philo Peter and another Vs. Divyanathan and others):

"3. Before considering the legal position emerging out of the above said decisions, it is necessary to take notice of the relevant provisions in the Succession Act, 1925. Section 266 of the Act provides that the District Judge shall have, in relation to the granting of Probate and Letters of Administration, all the powers and authority as are vested in him in relation to any civil suit. Section 288 lays down that the proceedings of the Court of the District Judge shall, save as otherwise provided, be regulated, so far as the circumstances of the case permit, by the Civil Procedure Code. A proceeding for Probate is initiated by the presentation of an application in that behalf. What are the matters which should be mentioned in such an application, is provided in Section 276. Similarly, a proceeding for Letters of Administration is initiated by an application as provided in Section 278. Section 295, which is the important section to be considered in these proceedings, reads as follows --

"If any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure 1908 (5 of 1908), in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff,

and the person who has appeared to oppose the grant shall be the defendant."

Section 299 provides for an appeal against every order made by the District Judge.

4. Before construing the scope of Section 295 of the Succession Act, it is better to refer to Order 25 of the Rules of the Original Side of the High Court, Madras of 1956. It relates to the Testamentary and Intestate matters and prescribes a procedure for granting Probate or Letters of Administration or Succession Certificate. It contains separate provisions for contentious and non-contentious matters, relating to Wills. A Will may be proved either in common form or in solemn form. In a case where the petitioner wants to prove the Will in common form, it is enough if he files the Will along with the affidavit of attesting witnesses. There is a provision for issuing public notice and also notice to the interested parties. In such cases, anybody intending to oppose the issue of Probate or Letters of Administration, may enter caveat under Rule 51 of Order 25 of the Original Side Rules and file an affidavit in support of the caveat under Rule 22 within eight days of entering the caveat stating the grounds of objection to the grant of Probate or Letters of Administration. On such contest being made, the proceeding, which was originated by the original petition, is converted into T.O.S. In such a case, the plaintiff is bound to pay the required Court-fee as provided in Article 11(k) of Schedule II of the Tamil Nadu Court-fees and Suits Valuation Act, 1955. Therefore, here, we find that there is a definite procedure prescribed for converting the petition into a regular suit in which case, the liability for payment of Court-fee is automatically attracted.

5. A difficulty was felt in construing the real scope of Section 295 of the Succession Act. There is no difficulty, as long as the petition is not opposed by any body. But when some body files a caveat and opposes the grant of probate or Letters of Administration, the question arose whether it should be treated as a suit and payment of Court-fee can be insisted on that basis. Two contentions were raised in such matters. One was whether the proceedings can be treated as a suit when it is not opposed by means of a caveat filed by the opposing parties even though such opposing parties are respondents in the petition. In considering this

petition, Paul, J. in Nattorajan Vs. Parthasarathi, T.O.S. No.8 of 1972, dt. 06-02-1973, held as follows:-

"In this case the petitioner himself chooses to prove the Will in solemn form so that all interested persons may come in, watch and participate in the proceedings when he can as well apply for probate on proving the Will in common form to avoid contest. If the proviso to Clause (2) is extended to cases where a petitioner applying for Probate or Letters of Administration with a Will annexed wants to prove the Will in the solemn form, it would encourage such persons to apply for Probate on proving the Will in common form and avoid any contest in order to avoid payment of ad valorem Court-fee. It is perhaps this aspect that has led to no provision being made for payment of ad valorem Court-fee, in cases coming under Rule 58 of Order 25 of the Original Side Rules. In these circumstances, I am of the opinion that the petitioner need not pay ad valorem Court-fee under the proviso to Sub-clause (2) of Article 11(k)(ii) of Schedule II of the Court-fees and Suits Valuation Act."

In Flarance Cheliah v. Soundararaj Peter, (1966) 2 Mad LJ 33, Veeraswami J. as he then was, had to consider a similar position. In that case, the petitioner herself had impleaded certain persons as respondents who are likely to oppose the petitioner in the original petition. The learned Judge directed the petition to be registered as a suit. Regarding the payment of Court-fee on advalorem basis, the learned Judge held as follows : --

"But the question is whether for the purpose of the proviso to Article 11(k) of the Court-fees and Suits Valuation Act, there should be a formal entry of caveat in order to attract the proviso, for; there is contention and the application is therefore, to be tried as a suit Merely because there is no formal entry of caveat, it does not appear that the proviso is none the less applicable. It is true Article 18 of Schedule II prescribes a separate Court-fee of Rs.10 on caveat. But merely because a caveat does not bear stamp, it cannot be said that it is not a caveat, any more than a plaint which bears less than the required Court-fee ceases to be a plaint on that account. Where an application for probate becomes contentious and is tried as a suit, it should be assumed for the purpose of the proviso that a caveat is impliedly

entered."

This decision was followed by Sengottuvelan,J., in Krishna Iyer Vs. Krishnamachari, 98 Mad.L.W. 80 : AIR 1985 Mad 346. The learned Judge, after considering the other decisions, came to the following conclusion : --

"A reading of Schedule II, Article 11(k) of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, clearly shows that in case of Wills not disputed a fixed Court-fee is made payable and where the Wills are disputed and the matter becomes contentious, a Court-fee of one half of the ad valorem value is made payable in view of the procedure for such matters as laid down by the Original Side Rules, 1956, by which if an objection is taken by means of a caveat an enhanced Court-fees is made payable. It is also seen that the enhanced Court-fee is made payable 'if a caveat is entered and the application is registered as a suit. In cases where the contesting respondents were already made parties, the original petition is registered as a suit straightway as per Order 25, Rule 58 of the Original Side Rules, 1956. Perhaps if the respondents cited in the original petition do not enter caveat, the petitioner may contend that in view of the fact that there is no contest no enhanced Court-fee is payable. But whenever there is contest, whether a caveat is entered or not, according to the provisions of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, enhanced Court-fee is payable."

6. It must be borne in mind that the decisions of Paul J. and Sengottuvelan J. relate to the proceedings before the Original Side of this Court and whereas the case decided by Veeraswami J. as he then was, arose out of the proceedings before the District Judge. In so far as the proceedings relating to Testamentary and Intestate matters covered under Order 25 of the Original Side Rules, are concerned, we have already seen that there are" specific provisions providing for registering a petition as a suit as and when the application is registered by means of a caveat. In such a case, the Payment of Court-fee is automatically payable under the Court-fees Act as it stands. We are not concerned with such matters in this case as the validity of such a procedure is not being challenged before us. Therefore, we confine ourselves to the short question relating to the original petitions filed before a District Judge under Section 295 of the Succession Act

only. Viewing from this angle, there cannot be a real conflict between these decisions. But however, Sengottuvelan,J., has chosen to differ from. the view expressed by Veeraswami,J., as he then was, in so far as the payment of Court-fee is concerned, as it has become necessary to resolve this apparent conflict. It is significant to note that the points now raised before us to the effect that when there is no provision for registering a petition as a suit by the District Judge in the Succession Act and as long as the petition is not registered as a suit, no Court-fee is payable on ad valorem basis, have not been taken in the earlier decisions.

7. Mr.R.Arunagirinathan, and Miss.M.B.Dominique, learned counsel appearing for the revision petitioners in these revision petitions contended that there is absolutely no provision in the Indian Succession Act to convert the original petition as a suit whenever a caveat is entered by the opposite party. According to them, what is provided under Section 295 of the Indian Succession Act is the procedure to be followed when the proceedings become contested The use of the words 'as nearly as may be' in the said section itself indicates that the proceeding in question was not considered to be exactly the same as a suit. It was further contended that even if such an extreme interpretation could be given, the proceeding cannot be treated as a suit in the absence of a caveat being filed by the opposing party. Learned counsel submitted that the Court-fees Act being a taxing statute, it has to be strictly construed as it has always been held that liberal construction in favour of the litigant has to be adopted. Learned counsel have relied on the decisions reported in Panzy Fernandes Vs. M.F.Queoros, AIR 1963 All. 153 (FB) and B.L.Banerjee Vs. Ganguly, AIR 1984 Cal. 16. The other decisions may not be relevant for the purpose of this case.

8. Per contra, Mr.K.Srinivasan, who is appearing for the respondents in C.R.R.P.2052 of 1987 and Mr.T.N.Vallinayagam, learned Government Pleader, submitted that the language of Section 295 of the Indian Succession Act is clear and mandatory that a petition filed for grant of Probate or Letters of Administration should be treated as a suit as soon as it is opposed by a contesting party either by filing a caveat or otherwise. The words found in Section 295 that the proceedings shall take the form of a regular suit and that the petitioner in such a case is treated as the plaintiff and the persons, who have appeared to oppose the grant shall be

the defendants, denote that for all practical purposes, the proceeding is nothing but a suit. According to them, if that is not the intentions, such positive terms would not have been used in the Section. Mr.Srinivasan, in support of his contentions, relied on the decisions reported in Kalyanchand Lalchand Vs. Sitabai, ILR 38 Bom 309 : (AIR 1914 Bom 8), Gangabai Vs. Jaikishindas, AIR 1938 Sind 36 (FB). In re Seethalakshmi, ILR (1980) 2 Ker 348 and Bai Zabu Khima Vs. Amardas, AIR 1967 Guj. 214, wherein it was held that contentious probate proceedings must take the form of a suit and that they constitute a suit within the meaning of the Code of Civil Procedure. Further, reliance was placed on the decision in Chotalal Vs. Bai Kabubai, (1898) ILR 22 Bom. 261, wherein it was held that since the proceeding becomes contentious, it must be treated as a plaint in a suit and that the suit is governed as far as practicable by the procedure prescribed in the Civil Procedure Code. It is a case relating to the Original Side of the Bombay High Court. Reliance was also placed on the decision reported in Dr.Mrs.I.S.Bose Vs. Mrs.H.N.Judah, AIR 1958 All. 672, which held that contested applications for probate and Letters of Administration have been classed along with first appeals for the matter of taxation. We are presently going to see that the same High Court has taken a different view in a later decision.

9. Learned Government Pleader relied on the decision of this Court in Noor Mohammad Vs. Mohammad Kareem, AIR 1938 Mad. 502, in which it was held as follows: --

"Under Section 295, where there is contention, the proceeding must take the form of a regular suit according to the Civil P. C. and in such a case, it is not open to the Court to refuse to make full enquiry and to proceed to decide the matter in a summary fashion leaving his decision subject to modification in a suit to be filed afterwards."

They have also relied upon the view expressed by Veeraswami,J., as he then was, and Sengottuvelan,J. in the above said case in support of their contentions, they urged that whether there is caveat or not, it matters little because what is intended under the Act is that once there is contest in such proceedings, it should be treated as a suit. Therefore, according to them, even if there is no formal caveat, it

is enough if the contesting parties are impleaded as respondents in the petition and they raised a contention opposing the Will. We feel that the principles laid down in the said rulings are of no help to the respondents as they have not directly considered the points that are being projected now in these proceedings. Moreover, we are unable to agree with the reasonings expressed in those decisions.

10. Since the question raised before us is of some importance relating to payment of court-fee, we have to carefully analyse the various views in this connection to find out the actual scope of Section 295 of the Succession Act in so far as payment of court-fee is concerned. In order to find out the meaning of 'suit' found in Section 295 of the Succession Act, which came to be passed in 1925, we have to see the provisions relating to suits in old Civil Procedure Code of the year 1859. Section 25 of the old Civil Procedure Code provided as follows: -

"all suits shall be commenced by a plaint which.... shall be presented to the curt by the plaintiff in person or by his recognised agent or by a pleader duly appointed to act on his behalf."

Further,Section 26 specified the particulars that are to be furnished in the plaint Section 27provided the manner in which the plaint was to be signed and verified. The provisions of the old and new Code of Civil Procedure disclose that a decree marks the culmination of a proceeding which is described as a suit and which, according to the Code, is initiated by means of a plaint. But in so far as the proceedings under the Succession Act are concerned they are not commenced by the institution of a plaint. But on the other hand, as Sections 278 to 281 of the said Act show, they are commenced by an 'application' or a 'petition'.

11. There is another angle from which we have to test the intention of the Legislature in prescribing the procedure as if it is a suit. Once we hold that the proceeding under the Act is not a suit, the orders passed in such a petition cannot be termed as a decree. Though the term 'decree' was not defined in the old Civil Procedure Code of 1859, it was Defined in Section 2(2) of the Civil P. C. 1908, as follows: --

"a formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final."

It is, therefore, possible to hold that the use of the term 'suit' in the above definition indicates that a decree under the Civil P.C could only be passed in a proceeding which could be termed as a 'suit'. In this connection, we have to notice the provisions in Section 299 of the Indian Succession Act, relating to the filing of appeals and it reads as follows--

"299. Appeals from orders of District Judge:-- Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure 1908 (5 of 1908), applicable to appeals."

Under the said section, every order including the order passed at the final stage granting the probate made by the District Judge shall be subject to appeal to the High Court. Even for the final judgment granting the Probate the word that has been used is 'order'. This provision also shows that the proceedings even if they had become contentious, did not become proceedings in the suit, and unless there is a suit as provided under the Civil P. C. there can be no decree, except in cases of certain orders which are expressly included in the definition of decree.

12. The question relating to the meaning of the words 'as nearly as may be' used in Section 295 of the Succession Act, has to be understood in the context in which it is uses in the Act. A perusal of Section 295 of the Succession Act, 1925 which corresponds to Section 261 of the Succession Act of 1865, itself indicates that such a proceeding is not a suit Since the Legislature did not treat the proceeding itself as a suit, it was found necessary in S.295 of the Act to lay down that such proceeding should, as nearly as possible take the form of a regular suit. In this connection, we have to give special meaning to the words 'as nearly as may be' in the section. The use of the said words itself indicates that the proceeding in question was not considered to be exactly the same as a suit. Again, we have to notice that the fact that the section itself directs that such a proceeding shall take

the form of a regular Suit, indicates that in substance it is not a suit. It is evident that the Legislature thought fit to make a distinction between a regular suit and the proceeding under Section 295 of the Act. As there is basic difference of the two proceedings, it was found necessary to direct that one was to take the form of the other. It Is also significant to note that such a direction regarding the change of the form is to be adopted only in cases where there is contention. Therefore, when there is no contention, the change of form contemplated in Section 295 of the Act does not come into operation and the proceedings fully retain their initial form. These principles have been elaborately considered by a Full Bench of the Allahabad High Court in Panzy Fernandes Vs. M.F.Queoros, AIR 1963 All. 153 and the learned Judges came to the same conclusion. We are in respectful agreement with the reasonings of the learned Judges who decided the said case.

13. We have bestowed our anxious consideration to the meaning of the words 'as nearly as may be' and we are unable to persuade ourselves to come to a conclusion that the proceeding under Section 295 can be termed to be a regular suit. The main reason is that if the Legislature had intended that such proceedings should be treated as suits and not as applications, there is nothing to prevent the Legislature from making a simple and clear provision to the effect that such proceedings might be converted into a suit and treated as such. This inference is strengthened by the fact that in Section 47. C.P. Code, it is laid down that it is open to a Court to treat a proceeding under that section as a suit and order payment of additional court-fee. The fact that such a specific provision was not made in Section 295 of the Succession Act, demonstrates the intention of the Legislature in clear terms.

14. In this context, we have to consider as to the proper Court-fee payable in a proceeding under Section 295 of the Succession Act. We have already seen that the petition filed under the said Act does not become a suit on a contention being raised by the opposite party. The proceedings are treated as a regular suit in form only and not in substance. Court-fee is now demanded on the basis of the provision contained in Article 11, Sub-clause (k) of Schedule II of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, which provides as follows:-

Particulars	Proper fee
(k) (i) Application for Probate or Letters of Administration to have effect throughout India	Twenty five rupees
(ii) Application for Probate or Letters of Administration not falling under clause (i)	Seventy five paise
(1) If the value of the estate does not exceed Rs.1000	Seventy five paise
(2) If the value exceeds Rs.1000	Five rupees

Provided that if a caveat is entered and the application is registered as a suit One half of the scale of fee prescribed in Art.1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied.

It is seen that Sub-clause (2) of Clause (ii) provides for payment of one half the scale of fees prescribed in Article 1 of Schedule 1 on the market value of the estate when a caveat is entered and the application is registered as a suit. Therefore, before a party is called upon to pay court-fee under this provision two

conditions must be satisfied, namely, that a caveat must have been entered and that the application must have been registered as a suit. Unless and until these conditions are satisfied, there is no warrant for demanding court-fee as if it is a regular suit. We have already seen that when the proceeding becomes contentious, it does not become a suit, as such, as contemplated under the Civil Procedure Code, and that it is considered to be a suit only in form and not in substance. Therefore, as long as there is no suit in the eye of law, this provision for payment of court-fee cannot-be invoked. We have also noticed that there is no provision anywhere in the Succession Act or in the Court-fees Act to register a petition under the Succession Act as a suit. When there is no such specific provision in any of these Acts, it is not open to the State to demand court-fee as if it is a regular suit, on such a petition at any stage of the proceedings.

15. There is one other reason for holding that the said provision under the Court-fees Act cannot be made applicable to a case of this nature. It is seen that Article 11(k) of Schedule 11 provides that one-half of the scale of fee prescribed in Article 1 of Schedule I on the market value of the estate is payable in the proceedings under the Indian Succession Act, as and when a caveat is entered and the application is registered as a suit Article 1 in Schedule I provides for payment of court-fee on the value of the subject-matter of the suit. This provision of law cannot be made applicable since the subject-matter in dispute in a proceeding relating to Probate or Letters of Administration is the right of the grantee to represent the estate of the deceased and as such it is incapable of valuation. The said provisions contained in the Court-fees Act contemplate payment of court-fee in cases where the subject-matter is capable of valuation and not otherwise. It cannot be disputed that the value of the properties comprised in such applications cannot be taken to be the value for purposes of payment of court-fee in such applications. The properties as such are not the subject-matter in dispute here and on the other hand the subject-matter in dispute is the right to represent the estate of the deceased and not the title to the said estate. It has to be noted that before an order actually entitling the petitioner to the grant of Probate or Letters of Administration is passed, he is required to pay court-fee on the Probate or Letters of Administration on the value of the estate under Schedule I of the Court-fees Act, Apart from this payment of court-fee, when the petitioner wants to recover the

property comprised within the estate of the deceased he is again required to pay ad valorem court fee on the plaint in the suit filed for recovery of the property. It is, therefore clearly seen that it would result in payment of court-fee more than once. It is a well established principle of law that such fiscal statutes should be construed strictly and whenever there is a doubt in the matter, an interpretation favourable to the litigants should be referred. These principles have been clearly laid down in the above said decision of the Allahabad High Court following the decisions reported in A.V.Fernandez Vs. State of Kerala and Central India Spinning and Weaving and Manufacturing Co. Ltd. Vs. Municipal Committee, Wardha., AIR 1958 SC 341. We, therefore, hold that a proceeding referred to in Section 295 of the Succession Act does not become a suit in the strict sense of the term even after it becomes contentious and as such court-fee is not payable as a suit under Article 11(k) of Schedule II to the Tamil Nadu Court-fees Act.

16. In so far as the decisions rendered by Paul,J., in Natarajan Vs. Parthasarathi and others T.O.S.No.8 of 1972, dt.6-2-1973 and Sengottuvelan,J., in Krishna Iyer Vs. Krishnamachari, 98 Mad.L.W. 80 : (AIR 1985 Mad. 346) are concerned, they relate to the proceedings in the Original Side of the High Court and as such it cannot be stated that they have taken a different view in so far as the proceedings taken before the Courts outside the Original jurisdiction of the High Court As regards the decision of Veeraswami,J., as he then was, in Flarence Chelliah Vs. Soundararaj Peter, (1965) 2 Mad LJ 33, it is seen that the question was not raised in the form in which it is raised in these proceedings and, therefore, the learned Judge had no opportunity to consider the matter from this angle. The only question that was raised before the learned Judge was whether the filing of a caveat is a condition precedent for treating the proceedings as a suit. It was a case where the object ore were impleaded as respondents in the original petition itself, and, therefore, it was contended that in the absence of a caveat being entered on their behalf, court-fee was not payable. In dealing with this question, the learned Judge came to the conclusion that merely because there was rio formal entry of a caveat, it does not mean that the proviso is none the less applicable. Even if it is to be construed that the Judge has taken a different view, we hold that it is no longer a good law.

17. In the result, we answer the reference in the following manner:-- When the proceeding initiated on a petition before a District Judge, for grant of Probate or Letters of Administration, becomes contentious and is required to be tried in the form of a regular suit according to the provisions of the Civil P. C., it cannot be considered as a suit in the strict sense of the term and as such ad valorem court-fee is not payable on such application under Article 11(k) (ii) Sub-clause (2) of Schedule II of the Tamil Nadu Court-fees and Suits Valuation Act, 1955. Since this is the only question to be decided in these two revision petitions, it is unnecessary to send back them to be disposed of by a learned single Judge of this court on merits. Therefore, these revision petitions are allowed and the orders of the lower court are set aside. No costs."

(p) AIR 1996 Madras 442 (Division Bench of Madras High Court) (Ammu Balachandran Vs. Mrs.U.T.Joseph (died) and others):

"21. The above are the principles on the basis of which a finding regarding the genuineness of a Will has to be arrived at. It also follows that if the provisions of the Will are natural and rationale in character, the question of challenging the Will on the above grounds loses much of its importance. Further, if the testator himself has explained the reason why he does not want to provide a particular heir, a suspicious circumstance cannot be alleged, if the execution is properly proved.

22. Long delay in producing the Will and getting it probated, if properly explained, and if the execution and attestation are properly proved also, is of no avail in granting the probate.

... ...

40. That apart in view of the decision of the Privy Council in AIR 1945 PC 105 (Manindra Chandra Lala Vs. Mahalaxmi Bank Ltd.), the said question also has to be answered only against the appellant. It was held in that decision thus :--

"Delay in applying for probate naturally gives rise to some suspicion but when the execution and attestation of the Will is proved the suspicion no longer operates."

The learned Judge has believed the evidence of P.W.1. Further, we have held that the Will was properly executed by the testator and also properly attested. In view of that finding also we find that even if there is any delay, the same is properly explained and that cannot be treated as a suspicious circumstance for denying a probate.

... ...

42. The same High Court, namely, the Andhra Pradesh High Court, in another Division Bench Judgment reported in (1978) 1 Andh.L.T. 407 (K.Jwala Narasimha Reddy Vs. Narayana Reddy), has held thus :

"where suspicion arises from the nature of the case put forward by the person claiming under the Will, he alone should remove that suspicion which his case creates. If, however, suspicion against the Will arises from the facts and circumstances of the case put forth by the opposite side, then the court should see whether those facts and circumstances giving rise to such a suspicion are proved before calling upon the claimant under the Will to explain or remove such a suspicion. The intention of the testator as declared in the Will disposing his property is of paramount importance. The very first question to be considered is whether the dispositions in the Will are natural, fair, reasonable and probable. That goes a long way in effecting the theory of vitiating suspicious circumstances. xxx xxx

"The suspicions on the basis of which a Will can be invalidated should be legitimate and well founded. They must be inherent in the transaction itself which is challenged. Mere conflict of testimony cannot be raised to the level of legitimate and well-grounded suspicious circumstances which are capable of vitiating the execution of the Will itself."

(emphasis supplied)

We have already referred to 1990 (3) SCJ 588 : (AIR 1990 SC 1742) (supra). In that case, their Lordships held that although freedom to bequeath one's own property amongst Hindus is absolute both in extent and person, including rank

stranger, yet to have testamentary capacity or a disposable mind what is required of propounder to establish is that the testator at time of disposition knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition. Prudence, however, requires reason for denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. (emphasis supplied). Absence of it may not invalidate a Will but it shrounds the disposition with suspicion as it does not give any inkling to the mind of the testator, to enable the Court to judge if the disposition was voluntary act. From this, it is clear that if reason is provided in the Will itself for disinheriting a heir or for giving only a lesser share, that removes the suspicious circumstances."

(q) 2001 (2) CTC 713 (Division Bench of Madras High Court) (Ramachandran.R. Vs. G.Hariharan):

"43. The learned counsel then contended that the respondent filed untrue affidavit of assets and that the properties are of very substantial value and he has purposely undervalued the house value. As pointed out in the ruling of this Court reported in Vyjanthimala Bali Vs. Rattan Chaman Bali, 1990 (1) L.W. 27 the under-valuation of the estate is a matter left to the concern of the Revenue Authority by the Legislature. The provisions of Sections 55 to 59 of the Tamil Nadu Court Fees and Suits Valuation Act contain the necessary safeguards. It is not for the Court to worry about the same. This decision is also applicable to the case on hand and will be an answer to the contentions raised by the appellant relating to the valuation of the property."

15. Learned Senior Counsels appearing for the defendants contended that S.V.Ramakrishnan is the father of the defendants and as alleged by the plaintiff, the plaintiff's mother S.V.R.Saroja is not the wife of the deceased S.V.Ramakrishnan. Even as per the recitals in the Will, the deceased Ramakrishnan stated that they were living as husband and wife, even though there was not marriage between them. It is further contended that even according to the documents exhibited by the plaintiff in the T.O.S., S.V.Ramakrishnan died intestate with regard to the suit items 3 and 4, which are not the properties of S.V.Ramakrishnan and those items would not form part of the Will, since there is

bald allegation in the Will with regard to the properties and hence, the defendants pray that the Letters of Administration may not be granted to the plaintiff. The plaintiff has under-valued the suit properties, and therefore, it is prayed that A.No.4456 of 2014 in T.O.S.No.2 of 2009, filed by the second defendant to direct the plaintiff to pray proper Court fees according to the market value of the suit properties, may be allowed.

16. Learned Senior Counsels appearing for the defendants further submitted that the executant of the Will, namely testator S.V.Ramakrishnan died on 31.12.1980 and Ex.P-23 Death Certificate has been filed by the plaintiff in that regard, but the present O.P.No.367 of 2008 for grant of Letters of Administration of the Will was filed initially only on 18.12.2006 and subsequently, it was re-presented, and therefore, after nearly 26 years, the said O.P. was filed, and on contest by the defendants, the said O.P. was converted into T.O.S.No.2 of 2009. It is their further contention that the ruling of the First Bench of this Court in O.S.A.Nos.10 and 72 of 2013, dated 07.01.2016, which is relied on by the learned counsel appearing for the plaintiff, may not be applicable to the facts of the present case, as the latest judgments rendered by the Supreme Court with regard to the point of limitation, were not considered. They also contended that the plaintiff had knowledge about the Will long back, i.e. even on the death of the death of the executant of the Will, namely S.V.Ramakrishnan, which was on 31.12.1980 and the O.P. (T.O.S) has not been fled within three years from the date of the knowledge of the Will, and therefore, they prayed that the T.O.S. may be dismissed as time barred.

17. Learned Senior Counsels appearing for the defendants further contended that the suit properties are not the properties of late S.V.Ramakrishnan, as he was not the absolute owner with regard to the same, and the properties are family ancestral properties and S.V.Ramakrishnan acquired the properties from his adoptive father, etc., and hence, he has no right to execute the Will with regard to the joint family properties. They further contended that the plaintiff's mother is not S.V.R.Saroja as contended by her, and the marriage invitation of S.V.Ramakrishnan with the defendants' mother, namely Rajalakshmi, is marked as Ex.D-1.

18. Learned Senior Counsels appearing for the defendants further submitted that the suit items 3 and 4 are not covered by the suit properties in T.O.S.No.2 of 2009, as the same are the suit properties in the suit filed in C.S.No.43 of 1962 before this Court, by the plaintiff's father along with the second defendant against one Buhari and another, and the copy of the plaint in C.S.No.43 of 1962 is marked as Ex.P-71 = Ex.D-13; the copy of the decree, dated 10.11.1965 passed in C.S.No.43 of 1962 is marked as Ex.P-72 = Ex.D-14. As against the said decree, dated 10.11.1965 passed in C.S.No.43 of 1962, the appeals in O.S.A.Nos.8 and 9 of 1966 were preferred, which were disposed of by the Division Bench of this Court on 10.05.1972, against which, Civil Appeal in C.A.No.224 of 1974 was preferred before the Supreme Court. The copy of the affidavit filed in I.A.No.2 of 2008 in C.A.No.224 of 1974 filed before the Supreme Court is marked as Ex.P-78. The judgment dated 17.04.1995 passed by the Supreme Court in C.A.No.224 of 1974 is marked as Ex.P-28, with amended cause title therein, which is marked as Ex.P-29. By the said judgment in C.A.No.224 of 1974, the Supreme Court restored the order of the learned single Judge passed in C.S.No.43 of 1962. In the said Civil Appeal before the Supreme Court, the plaintiff and others were impleded as parties only as legal representatives of the deceased S.V.Ramakrishna Mudaliar, but not based upon the Will executed by S.V.Ramakrishna Mudaliar, and hence, the plaintiff cannot now claim title to items 3 and 4 of the suit properties as beneficiary under Ex.P-1 Will. Subsequently E.P.No.48 of 1997 in C.S.No.43 of 1962 was preferred by S.V.Ramakrishna Mudaliar (since deceased) and S.V.Matha Prasad, the second defendant herein and the copy of the affidavit filed by the second defendant herein in the said E.P.No.48 of 1997 is marked as Ex.D-17. The copy of the order, dated 03.07.2000 passed in A.Nos.1106 to 1108 of 2000 in E.P.No.48 of 1997 in C.S.No.43 of 1962 is marked as Ex.D-5 and the order dated 07.07.2000 passed in the said E.P. is marked as Ex.D-6. The counter affidavit filed by the second defendant herein in A.Nos.2872 and 2873 of 2000 in E.P.No.48 of 1997 in C.S.No.43 of 1962 is marked as Ex.P-55. The copy of the order dated 24.08.2000 passed in A.Nos.2872 and 2873 of 2000 in C.S.No.43 of 1962 is marked as Ex.P-56 = Ex.D-18. The tampered copy of E.P.No.48 of 1997 in C.S.No.43 of 1962 with additions and deletions, is marked as Ex.D-20. Ex.D-8 is the letter dated 23.02.2007 issued by the Registrar General of this Court to the

second defendant regarding the tampering of records in E.P.No.48 of 1997 in C.S.No.43 of 1962.

19. Learned Senior Counsels appearing for the defendants further contended that Ex.D-7 is the order dated 17.04.2003 passed by the Supreme Court in S.L.P.(CC).No.895 of 2003 filed by the second defendant against the judgment dated 11.04.2001 (Ex.D-19) passed by the Division Bench of this Court in O.S.A.No.372 of 2000. Ex.D-10 is the order dated 24.03.2011 passed by this Court in W.P.No.2015 of 2008 filed by the second defendant herein against plaintiff and others. The learned Senior Counsels appearing for the defendants also submitted that Ex.D-16 is the copy of the affidavit filed before the Supreme Court in S.L.P.(CC).No.7242 of 1981 filed by the legal representatives of the deceased S.V.Ramakrishna Mudaliar against Buhari. Ex.D-21, dated 06.12.1982 is the compromise decree passed in C.S.No.469 of 1981 filed by M/s.Lakshmi Builders against the second defendant herein and others. Ex.D-22, dated 31.10.1998 is the copy of the deed of assignment executed by the plaintiff herein in favour of Mr.Lal Chand Menghraj and Chimandar Menghraj. Ex.D-23 = Ex.P-18, dated 21.10.1989 is the copy of the deed of sale executed by the plaintiff herein and others and the second defendant in favour of one Padmavathi. Ex.D-24 series are: the copy of the Legal Heirship Certificate of the defendants' father, the copy of the extract from the Permanent Land Register (Patta) issued by Tahsildar, Purasaiwalkam-Perambur Taluk and the copy of the order passed by the Special Commissioner and Commissioner of Land Reforms, Chepauk. Ex.D-25 is the copy of the counter filed by the respondent Nos.21 to 24 before the Supreme Court in S.L.P.(Civil).No.13783 to 13876 of 2008.

20. Learned Senior Counsels appearing for the defendants submitted that item Nos.3 and 4 of the suit properties have not been included in the Will, even though it is admitted by the plaintiff that S.V.Ramakrishnan died intestate and has not executed any Will as regards item Nos.3 and 4 and the said fact is supported by subsequent documents like the order passed by the Supreme Court and the E.P. proceedings before this Court. They also submitted that the plaintiff has not independent right even as regards item Nos.1 and 2 of the suit properties, since they are undivided joint family properties. From the above documents, it is clear

the Will was not executed by the deceased S.V.Ramakrishnan and therefore, they prayed that the Letters of Administration proceedings in O.P.(T.O.S) may be dismissed as time barred. In support of their submissions, learned Senior Counsels appearing for the defendants relied on the following decisions:

(a) 2007 (2) SCC 230 (Raghunath Rai Bareja Vs. Punjab National Bank):

"29. Learned counsel for the respondent-Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and director of the Company which took the loan, avoids paying the debt. While we fully agree with the learned counsel that equity is wholly in favour of the respondent-Bank, since obviously a Bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "dura lex sed lex", which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant or override it.

30. Thus, in Madamanchi Ramappa Vs. Muthaluru Bojjappa (AIR 1963 SC 1633),(vide AIR p.1637, para 12) this Court observed :

"..... what is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law."

31. In Council for Indian School Certificate Examination Vs. Isha Mittal (2000 (7) SCC 521) (vide SCC p.522, para 4) this Court observed :

"..... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."

32. Similarly in P.M.Latha Vs. State of Kerala (2003 (3) SCC 541 : 2003 SCC (L and S) 339) (vide SCC p.546, para 13) this Court observed :

"13. Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law".

(emphasis supplied) 33. In Laxminarayan R.Bhattad Vs. State of Maharashtra (2003 (5) SCC 413) (vide SCC p.436, para 73) this Court observed :

"73. It is now well settled that when there is a conflict between law and equity the former shall prevail."

(emphasis supplied)

34. Similarly in Nasiruddin Vs. Sita Ram Agarwal (2003 (2) SCC 577 : AIR 2003 SC 1543) (vide SCC p.588, para 35) this Court observed :

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

35. Similarly in E.Palanisamy Vs. Palanisamy (2003 (1) SCC 123) (vide SCC p.127, para 5) this Court observed :

"Equitable considerations have no place where the statute contained express provisions."

36. In India House Vs. Kishan N.Lalwani (2003 (9) SCC 393) (vide SCC p.398, para 7) this Court held that :

"The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations."

(emphasis supplied)"

(b) 2003 (1) SCC 730 (Jinia Keotin Vs. Kumar Sitaram Manjhi):

"4. We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescription, any child born of such marriage would have the effect,

per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned to the properties of the parents only.

5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provide in sub-section (3) by engrafting a provision with a non obstante clause stipulating specifically that nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage, which is null and void or which is annulled by a decree a nullity under Section 12, "any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents." In the light of such an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in sub-section (3) of Section 16 of the Act but also would attempt to court relegislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are

unable to countenance the submissions on behalf of the appellants. The view taken by the courts below cannot be considered to suffer from any serious infirmity to call for our interference, in this appeal."

(c) 1995 (6) SCC 213 (Kashibai Vs. Parwatibai):

"10. This brings us to the question of the Will alleged to have been executed by deceased Lachiram in favour of his grandson Purshottam, Defendant 3. Section 68 of Evidence Act relates to the proof of execution of document required by law to be attested. Admittedly, a Deed of Will is one of such documents which necessarily require by law to be attested. Section 68 of the Evidence Act contemplates that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. A reading of Section 68 will show that 'attestation' and 'execution' are two different acts one following the other. There can be no valid execution of a document which under the law is required to be attested without the proof of its due attestation and if due attestation is also not proved, the fact of execution is of no avail. Section 63 of the Indian Succession Act, 1925 also lays down certain rules with regard to the execution of unprivileged Wills. Clause (c) of Section 63 provides that the Will shall be attested by two or more witnesses, each one of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark or the signature of such other person; and each of the witnesses should sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

11. Here we may also take note of the definition of the expression 'attested' as contained in Section 3 of the Transfer of Property Act which reads as under:

"3. 'attested', in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person

sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary."

Having regard to the aforementioned definition an attesting witness is a person who in the presence of an executant of a document puts his signature or mark after he has either seen the executant himself or someone on direction of the executant has put his signature or affixed his mark on the document so required to be attested or after he has received from the executant a personal acknowledgement of his signature or mark or the signature or mark of such other person. In the present case the trial court after a close scrutiny and analysis of the evidence of Defendant 1, Smt Parvati Bai, Vir Bhadra, Sheikh Nabi, Shivraj and Gyanoba Patil who are witnesses to the Will recorded the finding that none of them deposed that Lachiram had signed the said Will before them and they had attested it. None of them except Sheikh Nabi even deposed as to when the talk about the execution of Will was held. The witness Sheikh Nabi, however, deposed that the talk about the Will also took place at the time of the talk about the adoption. But this witness too did not depose that deceased Lachiram had signed the alleged Will in his presence. In the absence of such evidence it is difficult to accept that the execution of the alleged Will was proved in accordance with law as required by Section 68 of the Evidence Act read with Section 63 of the Indian Succession Act and Section 3 of the Transfer of Property Act. It may be true as observed by the High Court that law does not emphasise that the witness must use the language of the section to prove the requisite merits thereof but it is also not permissible to assume something which is required by law to be specifically proved. The High Court simply assumed that Lachiram must have put his signature on the Will Deed in the presence of the attesting witness Sheikh Nabi simply because the Deed of Adoption is admitted by the witness to have been executed on the same day. The High Court committed a serious error in making the observations that broad parameters of Nabi s evidence would show that Lachiram executed the Will in his presence, that he signed the Will being part of

the execution of the testament and this evidence in its correct background would go to show that what was required under Section 63 has been carried out in the execution of the Will. With respect to the High Court we may say that these findings of the High Court are clearly based on assumptions and surmises and, totally against the weight of the evidence on record. The trial court on a close and thorough analysis of the entire evidence came to a proper conclusion that the Will has not been proved in accordance with law which finding has been further affirmed by the lower appellate court after an independent reappraisal of entire evidence with which we find ourselves in agreement as there was hardly any scope or a valid reason for the High Court to interfere with."

(d) 2008 (12) SCC 577 (Kamlesh Babu Vs. Lajpat Rai Sharma):

"16. Having considered the submissions made on behalf of the respective parties, the decisions cited by them and the relevant law on the subject, we are unable to accept Ms.Srivastava's submissions mainly on two counts. Firstly, the facts disclosed clearly indicate that neither the first appellate court nor the High Court took notice of Section 3(1) of the Limitation Act, 1963, which reads as follows:

"3. Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

Even in the decision of this Court in Darshan Singh case (State of Punjab Vs. Darshan Singh - 2004 (1) SCC 328), the said provision does not appear to have been brought to the notice of the Hon'ble Judges who decided the matter.

17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.

... ...

21. It is no doubt true, as was pointed out by this Court in Balasaria Construction (P) Ltd. (Balasaria Construction (P). Ltd. Vs. Hanuman Seva Trust - 2006 (5) SCC

658) and also in Narne Rama Murthy case (Narne Rama Murthy Vs. Ravula Somasundaram - 2005 (6) SCC 614), that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. We have no problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable to the facts of this case. In this case the plea of limitation had been raised in the written statement and though no specific issue was framed in respect thereof, a decision was given thereupon by the learned trial court.

22. Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(d) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in Lachhmi Sewak Sahu Vs. Ram Rup Sahu (AIR 1944 PC 24) held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts.

23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court s jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. ... ... "

(e) 2008 (8) SCC 463 (Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur):

"11. In Kerala SEB Vs. T.P.Kunhaliumma (1976 (4) SCC 634) it was inter alia observed as follows: (SCC pp.638 and 39, para 18 and 22):

"18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third

division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

* * *

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-Judge bench of this Court in Athani Municipal Council case (Town Municipal Council, Athani Vs. Presiding Officer, Labour Court, 1969 (1) SCC 873) and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

In terms of the aforesaid judgment any application to Civil Court under the Act is covered by Article 137. The application is made in terms of Section 264 of the Act to the District Judge. Section 2(bb) of the Act defines the District Judge to be the Judge of the Principal Civil Court.

12. Further in S.S. Rathore Vs. State of M.P. (1989 (4) SCC 582 : 1990 SCC (L and S) 50 : 1989 (11) ATC 913) it was inter-alia stated as follows: (SCC p.585, para 5)

"5. Appellant's counsel placed before us the residuary Article 113 and had referred to a few decisions of some High Courts where in a situation as here reliance was placed on that article. It is unnecessary to refer to those decisions as on the authority of the judgment of this Court in the case of Pierce Leslie and Co. Ltd. Vs. Violet Ouchterlony Wapshare (AIR 1969 SC 843) it must be held that Article 113 of the Act of 1963, corresponding to Article 120 of the old Act, is a general one and would apply to suits to which no other article in the schedule applies."

13. Article 137 of the Limitation Act reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues

The crucial expression in the petition (sic Article) is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings it is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was S.Krishnaswami Vs. E.Ramiah (AIR 1991 Madras 214). In para 17 of the said judgment it was noted as follows: (AIR p.222)

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to

perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under Article 137 of the Limitation Act, 1963."

14. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in Kerala SEB case (supra).

15. Similarly reference was made to a decision of the Bombay High Court in Vasudev Daulatram Sadarangani Vs. Sajni Prem Lalwani (AIR 1983 Bom. 268). Para 16 reads as follows: (AIR p.270)

"16. Rejecting Mr.Dalpatrai's contention, I summarise my conclusions thus:--

(a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years form the date of he deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates".

Conclusion 'b' is not correct while the conclusion 'c' is the correct position of law."

(f) 1990 (2) SCC 42 (Patasibai Vs. Ratanlal):

"13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done.

14. It being beyond dispute that the plaint averments do not disclose a cause of action, the plaint is liable to be rejected under Order VII Rule 11, CPC without going into the applicability of Order XXIII Rule 3-A, CPC to the present suit. Having reached this conclusion, it is unnecessary to adopt the technical course of directing the trial court to make the consequential order of rejecting the plaint and, instead, we adopt the practical course of making that order in this proceeding itself to avoid any needless delay in conclusion of this futile litigation."

(g) 2004 (8) SCC 229 (Krishna Bahadur Vs. Purna Theatre):

"9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration."

(h) 2004 (13) SCC 792 (A.P.SRTC Vs. S.Jayaram):

"5. It was next submitted that the respondent should be deemed to have waived his rights under Circular No. 45/81 by submitting tender in response to the notice inviting tenders in the year 1984 and he must be held bound by the terms of the contract which he entered into pursuant to the tender submitted by him. The High Court has formed an opinion that the respondent cannot be deemed to have waived the right or the benefit available to him under Circular No. 45/81 because he was not even aware of the existence of the circular. To constitute waiver there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right or conduct such as warrants an inference of the relinquishment of a known right or privilege (Basheshar Nath Vs. CIT -- AIR 1959 SC 149). Moreover, the circular itself stipulates the Corporation making an offer to the contractors for taking benefit of the policy decision and it is undisputed that the Corporation never made such an offer to the respondent. Inasmuch as there is a failure on the part of the Corporation to extend the benefit of the circular to the respondent, the Corporation cannot be permitted to take shelter behind its own wrong."

(i) 1987 (Supp) SCC 663 (Samar Singh Vs. Kedar Nath):

"5. The above view was reiterated by this Court in Bhagwati Prasad Dixit Vs. Rajiv Gandhi (1986 (4) SCC 78 : 1986 SCC (Cri) 399) and Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi (1987 Supp.SCC 93). If an election petition does not disclose cause of action, it can be dismissed summarily at the threshold of the proceeding under Order 7 Rule 11 of the Code of Civil Procedure. If an election petition can be summarily rejected at the threshold of the proceeding we do not see any reason as to why the same cannot be rejected at any stage of subsequent proceeding. If after framing of issues basic defect in the election petition persists

(absence of cause of action) it is always open to the contesting respondent to insist that the petition be rejected, under Order 7 Rule 11 and the court would be acting within its jurisdiction, in considering the objection. Order 7 Rule 11 does not place any restriction or limitation on the exercise of court s power; it does not either expressly or by necessary implication provide that power under Order 7 Rule 11 CPC should be exercised at a particular stage only. In the absence of any restriction placed by the statutory provision, it is open to the court to exercise that power at any stage. While it is true that ordinarily preliminary objection to the maintainability of the petition on the ground of absence of cause of action should be raised by the respondent as early as possible but if a party raises objections after filing written statement the preliminary objection cannot be ignored. If the election petition does not disclose any cause of action, the respondent s right to raise objection to the maintainability of the petition, or the court s power to consider the objection is not affected adversely merely because the objection is raised after filing of written statement or framing of issues. The court would be acting within its jurisdiction in exercise of its power under Order 7 Rule 11 in rejecting the same even after settlement of issues."

(j) 1999 (3) CTC 136 (Madras High Court) (Singaram @ Velayudha Udayar Vs. Subramaniam):

"18. Section 16 of the Hindu Marriage Act had been enacted to confer a right of inheritance on the illegitimate child born out of void or voidable marriage from out of the individual properties of their father. The section before amendment dealing with the children of void marriages provided that if a decree of nullity was passed, the children begotten or conceived before the decree would have been the legitimate children of the parties to the marriage, if it had been dissolved. As the old provision contemplated the necessity of a decree of nullity under Section 11 which took into its fold only the marriages in contravention of the conditions in classes (i) (iv) and (v) of Section 5. The proviso to the old section is now incorporated as sub-section (3) of the said Act.

19. Sub-section (3) provides that in case of a child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12 though the child

may be a illegitimate child under sub-section (1) or (2) the child would be entitled only to possess or acquire rights in or to any property of its parents and not to those of others, in fact, it means such child would not have the status of a legitimate so far as the persons other than the parents are concerned.

20. A thorough reading of Section 16 makes it clear that there should be a void or voidable marriage between the parents of the individual who claims the status of an illegitimate child to get a share from out of the estate of his father. If there is no proof of any marriage, then the children born cannot also be treated as illegitimate children entitled for a share. In the judgment reported in Muthayya Vs. Kamu, 1981 (I) MLJ 107 it has been held as follows:

"The result is there is no proof of any marriage between the first plaintiff and Meenakshisundaram and that the children born cannot also be treated as legitimate children."

... ...

22. In the case on hand there is absolutely no evidence to establish the question of marriage between Nainamalai and the fourth defendant. More so, both the courts below have concurrently, on a question of fact, held that there was no marriage at all in any form between the said Nainamalai and the fourth defendant. When there is no marriage, the fourth defendant can be only a concubine of the said Nainamalai. Section 16 of the said Act do not deal with the rights of the children through the concubinage.

.. ...

25. Even in considering this argument of the learned senior counsel for the appellant, it has to be considered that the presumption of the marriage can be drawn by the long co-habitation of the man and the woman and their living together and they have been treated by their relatives and the society as husband and wife.

26. It is rather unfortunate that the fourth defendants who claims the status of the second wife and the fifth defendant Arunachalam who claims to be the legitimate

son of the said Nainamalai have not filed any written statement claiming such plea, The third defendant, the mother of the first defendant and his brother Nainamalai even though stated that Nainamalai married the fourth defendant, no particulars with regard to the marriage is forthcoming. In the written statement filed by the third defendant, adopted by the second defendant, it is stated that Nainamalai lived with the fourth defendant,No particulars have been stated with regard to the time of desertion by the second plaintiff, the first wife of Nainamalai and the period for which the fourth defendant and Nainamalai lived together. Here also it may be pertinent to note that living together means they ought to have been lived together for considerably a long period and just the paramour visiting the place of the concubine cannot be considered to be living together and which confers a right of inheritance to the children as illegitimate one. Merely D.W.3 village Karnam has stated that after the death of Nainamalai the property was divided among his two wives, it cannot be said that the relatives of the said Nainamalai and the fourth defendant have treated them as husband and wife. In the absence of any evidence to show that the relatives of both the parties or the society at large have treated them as husband and wife, no such presumption can be drawn."

(k) AIR 1991 Madras 214 (Division Bench of Madras High Court) (S.Krishnaswami nd etc., etc., Vs. E.Devarajan and others):

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a

view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming with the meaning of an 'application' under Art.137 of the Limitation Act, 1963.

... .

20. We have now, as per our preceding discussion, settled the question and we hold that Art.137 of the Limitation Act would not apply to proceedings filed for grant of probate or letters of administration with or without the Will annexed. Before concluding, we must point out that though the proceedings filed for grant of probate or letters of administration may not come within the mischief of Art.137 of the Limitation Act, 1963, yet the delay aspect is relevant to test the genuineness of the Will propounded. Delay in taking steps gives rise to suspicion and the longer the delay the stronger the suspicion. .. ... "

(l) 1989 (2) LW 319 (Madras High Court) (Sakunthala Vs. Minor Vijayalakshmi):

" 15. The Parliament thought fit to change the position by introducing the Limitation Act No. 36 of 1963 which replaced the Act of 1908. As per the preamble, the new Act is to consolidate and amend the law for the Limitation of suits and other proceedings and purposes connected therewith. Even the definition of 'Applicant' was changed, which indicated that the Act is intended to apply to proceedings under the Indian Succession Act also. While in the earlier Act an 'Applicant' was defined as 'including any person from or through whom an applicant derives his right to apply', the present Act defines an 'applicant' as follows:

"applicant" includes:

(i) a petitioner;

(ii) any person from or through whom an applicant derives his right to apply?

(iii) any person whose estate is represented by the applicant as executor. administrator or other representative."

The term 'application' is defined for the first time in this Act as including a petition. Thus, there is a clear indication that Original Petitions which may not be covered by the Code of Civil Procedure would also be within the purview of the present Act.

16. Art.137 of Act 36 of 1963 is the provision corresponding to Art. 181 of the previous Act. There is a significant change in the language in column (1). Art. 137 is as follows:

Description of suit	Period of limitation	Time from
137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	which period begins to run When the right to apply accrues

The language of Art. 137 also makes it clear that the Article is not confined to the applications under the Code of Civil procedure. Though there was a conflict of opinions among the Courts in this country as to the applicability of the Article to applications filed under provisions other than the Code of Civil Procedure, the controversy was set at rest by the apex Court of the country in The Kerala State Electricity Board, Trivandrum Vs. T.P.Kunhaliumma (AIR 1977 SC 282). The law is stated in unmistakable terms in paragraph 18, 21 and 22 of the Judgment, which are extracted hereunder :

"18. The alteration of the Division as well as the change in the application in Art.137 of the Limitation Act 1963 compared with Art.181 of the 1908 Limitation Act shows that applications contemplated under Art.137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words any other application under Art.137 cannot be said on the principle of ejusdem generies to be application under the Civil Procedure Code other than those mentioned in Part I of the third Division. Any other application under Art.137 would be petition or any application under any Act. But it has to be an application to a Court for the reason that S. 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal cr making the application during such period.

x x x x x

21. The changed definition of the words 'applicant' and 'application' contained in S.2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Art.181 of the 1908 Limitation Act on the principles of ejusdem geuerise is not applicable with regard to Art.137 of the 1963 Limitation Act. Art.137 stands in isolation from all other Articles in Part I of the third division. This Court in Nityananda Joshi's case (AIR 1970 SC 209), has rightly thrown doubt on the two Judge Bench decision of this Court in Anthani Municipal Council case (AIR 1969 SC 1335), where this Court construed Art.137 to be referable to applications under the Civil Procedure Code. Art.137 includes petitions within the word 'applications'. These petitions and applications can be under any special Act as in the present case.

22. The conclusion we reach is that Art.137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in Anthani Municipal Council case (AIR 1969 SC 1335), and hold that Art.137 of the 1963

Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Art.137 of the 1963 Limitation Act."

17. After the pronouncement of the Supreme Court, it will be futile to contend that Art.137 does not apply to applications for probate, Letters of Administration etc. Whatever may be the nature of the proceeding, so long as it is an application to a Court, it will be governed by Art.137 of the Limitation Act. "No authority has been placed before me taking a contrary view. The judgment of the Patna Bench in Ramanand Thakur's case (AIR 1982 Patna 87), on which reliance is placed by the plaintiff is also on the footing that Art.137 of the Limitation Act will apply to an application for grant of probate or Letters of Administration. But, the Bench proceeded to hold that in the case of an application for grant of probate or Letters of Administration, it is difficult to find out when the right to apply accrues and unless that date can be fixed, there is no question of starting of the period of limitation. With respect to learned Judges who constituted the Bench, I do not agree. There can be no question of any difficulty at all in finding out as to when the right to apply accrues in any case. Even if there is any difficulty in fixing the date, that will not take away the application from the purview of the Article which has been held to apply to the application. In so far as column (3) of the Article is concerned, the Court has to decide on the facts and circumstances of each case as to when the right to apply for the relief prayed for in the application accrued to the applicant therein. It has been repeatedly held that for the purposes of the third column, the relevant date is the date on which the right accrued for the first time.

... .

21. I am afraid, there is a fallacy in the reasoning The word used in the third column is 'accrues'. The term 'accrue' has been defined in the Oxford Dictionary as "to arise or spring as a natural growth or result; to grow, grow up". A right which has accrued cannot be said to accrue every day until it is exercised. In the absence of a provision for limitation, every right will continue to subsist till it is

actually exercised. For example, a creditor has a right to recover the money due to him from his debtor. His right continues to exist so long as the debtor does not repay. If there is no provision in the Limitation Act prescribing a time limit for instituting a proceeding for recovery of the money due to the creditor, the creditor can file a suit or other proceeding at any time he chooses. In that case also it can be said that his right to recover the money arises every day. But, the Limitation Act has prescribed a period with in which the creditor is bound to file a suit for recovery of the money and by the third column in the Schedule, the relevant date from which the limitation begins to run is also fixed by the statute. Similarly, in the case of a trespass, the owner of the property has a right to recover possession The commencement of the right was on the date of trespass. It will never end if there is no provision in the Limitation Act prescribing a period of Limitation for instituting a proceeding for recovery of possession. In that case also it can be said that his right to recover possession arises from day to day and every moment so long as the trespasser continues to be in possession. Hence, it will be fallacious to keep out a particular type of application from the scope of Art. 137 of the Limitation Act on the basis of the reasoning that the right to apply accrues from day to day and every moment. If on a reference to the language in the third column, the date on which the right to apply accrues for the first time is fixed, then the right comes to an end at the end of three years therefrom. There can be no escape from that position.

22. The probable reason for which the statutes of limitation passed in the 19th century excluded from their purview the proceedings for probate or Letters of Administration etc., as suggested by Muttusami Ayyar,J, is caught hold of by the Patna Bench in Ramanad Thakur's case (AIR 1982 Patna 87) as well as a single Judge of the Bombay High Court in a later case, to which I will refer presently. I have already referred to the fact that the question which arose before the great Judge did not turn on the interpretation of column 3 of the Schedule. Having found that the provisions of the entire Act as it stood then exempted applications for probate from the operation thereof, the learned Judge in his wisdom ventured to give a reason which could have probably prompted the Legislature to make such an exemption. It should not also be forgotten that the observation made by the learned Judge is applicable only to an application for probate at the instance of an

executor. The position with reference to an executor does not arise for my consideration in the present case. The discussion of the question in this case confines itself to applications for Letters of Administration. A legatee who applies for Letters of Administration can by no stretch of imagination be compared to a trustee or be called a testamentary trustee. It cannot be said that he is seeking permission of the Court to perform a duty created by the will, for, no duty is imposed upon the legatee by the will. Even if it is so, the application to this Court is one for grant of Letters of Administration with the will annexed. The right to apply for the said relief accrued in favour of the applicant more than a decade before the presentation of the application. On the facts of this case, the relevant dates have already been set out and for the purpose of convenience, they are repeated here. The testator died on 12.2.1944. The two executors appointed under the will died before 1970 (the exact date does not appear in the records). The first beneficiary Rajambal died on 27.3.1970. Even assuming that the right of the plaintiff to apply for Letters of administration did not accrue on any earlier date, it cannot be denied that it accrued on 27.3.1970, on the death of Rajambal. Even if it can be said by any process of reasoning of which I am not aware, the right to apply did not accrue on that date, the date could not be later than 1.10.1973 when the plaintiff's brother Nithyanandham sold the property to defendants 4 and 5. The plaintiff, who was aware of the fact, filed a suit in the City Civil Court in 1974 and the claim put forward by her under the will was contested immediately in 1976 by the defendants therein. In spite of that, the plaintiff did not choose to present the application for probate till 9.11.1983. Unless the Court closes its eyes to the provisions of Art.137 of the Limitation Act and ignores the same altogether, the present proceeding instituted by the plaintiff cannot be held to be in time.

23. There is a judgment of a single Judge of the Bombay High Court which was not cited by either counsel in this case. That is a decision by Lentin. J., in Vasudev Daulatram Sadarangani Vs. Sajni Prem Lalwani (AIR 1983 Bombay 268). The learned Judge held that under the Limitation Act 1963, no period is advisedly prescribed within which a petition for probate or Letters of administration or succession certificate must be made and that the right to apply under Art. 137 of the Act would accrue when it becomes necessary to apply which need not necessarily be within three years from the date of death of the deceased. It is seen

that paragraphs 13 to 16 of the judgment are alone approved for reporting by the Bombay High Court and they alone find a place in the report. Hence, it is not possible to know the facts of the case, particularly as to whether the application before the learned Judge was one for probate or letters of administration. The Learned Judge drew inspiration from the judgment of Muttusami Ayyar, J. in Gnanamuthu Upadesi's case (ILR 17 Mad.379), and took the view that the right to apply may accrue as and when it becomes necessary to apply. With respect to the learned Judge, I do not know how the proposition laid down by the Learned Judge flows from the observation made by Muttusami Ayyar, J. in Gnanamuthu Upades's case (ILR 17 Mad. 379). The reasoning is also not correct. The decision of the Supreme Court in The Kerala State Electricity Board, Trivandium Vs. T.V.Kunhaliumma (AIR 1977 SC 282), was brought to the notice of the Learned Judge. Yet, he took the view that the observations made by the Supreme Court will have nothing to do with the exercise of a continuous right of an executor seeking the Court's permission to perform the duties cast on him by the Will. If the case before the Learned Judge related to an application for probate by an executor, I will have nothing to do with it. As stated already, I am not called upon to decide in this case, the question of limitation for filing an application for probate by an executor. If the judgment of Lentin,J. pertained to an application for letters of administration, I express my dissent with the view taken by the learned Judge. In my opinion, the Judgment runs counter to the ruling of the Supreme Court in the Kerala State Electricity Board's case (AIR 1977 SC 282).

....

27. Reliance was placed by the plaintiff on the provisions of 0.25, R. 9 of the Original Side Rules. The rule is in the following terms:

"In any case where probate or letters of Administration is for the first time applied for after the lapse of three years, from the death of the deceased, the reason for the delay shall be explained in the petition."

The rule remains unamended even after the passing of the Limitation Act 36 of 1963. In any event, a provision in the Original Side rules cannot override the provision in the Limitation Act. Once it is held that Art. 137 of the Limitation Act will

apply and the present proceeding is barred by time, 0.25, R.9 of the Original side Rules will not help the plaintiff in any manner."

21. Upon hearing the learned counsel appearing for both parties and perusing the records, it is seen that the following facts are admitted by both sides:

S.V.Ramakrishnan married Rajalakshmi and their marriage invitation is marked as Ex.D-1. The first defendant is their daughter and the second defendant is their son. The plaintiff-N.Renuka Devi, R.Vijayalakshmi @ R.Vijaya and R.S.P.Dhanurmathi are the daughters and S.V.R.Ramprasad is the son of the deceased S.V.Ramakrishnan and S.V.R.Saroja, the second wife of the deceased S.V.Ramakrishnan. The testator S.V.Ramakrishnan died on 31.12.1980 and his Death Certificate is marked as Ex.D-23. Late S.V.Ramakrishnan and the second defendant earlier filed a suit for re-conveyance of the properties mentioned in the suit in C.S.No.43 of 1962 before this Court, against one Buhari and another and the plaint copy in C.S.No.43 of 1962 is marked as Ex.P-71 = Ex.D-13. The judgment, dated 10.11.1965 rendered in C.S.No.43 of 1962 is marked as Ex.P-72 = Ex.D-14. As against the said judgment, dated 10.11.1965 in C.S.No.43 of 1962, the appeals in O.S.A.Nos.8 and 9 of 1966 were preferred, which were disposed of by the Division Bench of this Court on 10.05.1972, against which, Civil Appeal in C.A.No.224 of 1974 was preferred before the Supreme Court. The copy of the affidavit filed in I.A.No.2 of 2008 in C.A.No.224 of 1974 filed before the Supreme Court is marked as Ex.P-78. The judgment dated 17.04.1995 passed by the Supreme Court in C.A.No.224 of 1974 is marked as Ex.P-28, with amended cause title therein, which is marked as Ex.P-29. Subsequently E.P.No.48 of 1997 in C.S.No.43 of 1962 was preferred by S.V.Ramakrishna Mudaliar (since deceased) and S.V.Matha Prasad, the second defendant herein, and the order dated 07.07.2000 passed in the said E.P. is marked as Ex.D-6. The counter affidavit filed by the second defendant herein in A.Nos.2872 and 2873 of 2000 in E.P.No.48 of 1997 in C.S.No.43 of 1962 is marked as Ex.P-55. The copy of the order dated 24.08.2000 passed in A.Nos.2872 and 2873 of 2000 in C.S.No.43 of 1962 is marked as Ex.P-56 = Ex.D-18. The suit properties in item Nos.3 and 4 are not specifically included in the Will and the Will does not contain any specific properties.

22. Learned counsel appearing for the plaintiff contended that Late S.V.Ramakrishnan executed the Will on 15.07.1970 out of free consent and in a sound and disposing state of mind in the presence of two attesting witnesses, namely T.S.Ramadoss and Dr.R.Paul Doraiswamy and the Will was duly registered on the next day, i.e. 16.07.1970 in the Sub-Registrar Office. It is useful to quote the contents of Ex.P-1 Will executed by the testator S.V.Ramakrishnan, dated 15.07.1970, registered on 16.07.1970, which reads as follows:

"I, S.V.RAMAKRISHNAN, son of S.V.Ramaswamy Mudaliar, Hindu, aged 50 years, residing at " Ramamandiram" No.471, Poonamalle High Road, Madras, make this Last Will and Testament the day month and year written below:

I am now 50 years old and am keeping indifferent health. My first wife, Rajalakshmi, died in March 1952, leaving behind a son, Matha Prasad, and a daughter Lalitha. Matha Prasad and myself entered into a family arrangement in May, 1969 and he has left me. My daughter, Lalitha, married against my wishes, and hence I do not propose to leave anything to her.

I am living with Srimathi Saroja, and we are living as husband and wife, even though there has not been a marriage between us. I have two daughters and a son through her. I want to make provision for them and after careful deliberation have decided to execute this Will.

It will not be possible now to detail the properties, immoveables, moveable, cash, etc., that I may die possessed of. Hence I do not propose to detail them.

All the properties, immoveable, cash in Bank, Securities, moveables, such as furniture, paintings, shares, etc., I hereby bequeath as follows:-

All the properties on the date of my death shall be taken over by the Official Trustee, or such officer or person appointed by Court, and he shall deal with them as follows:-

(a) The Official Trustee shall pay Rs.200/- a month to Srimathi Saroja who is living with me as my wife.

(b) The Official Trustee shall pay for the education and maintenance of my children through Saroja, i.e. Vijaya, Rama Prasad and Renuka Devi.

(c) The properties shall be held by the Official Trustee till my youngest daughter Renuka completes the age of 18. Then a sum of Rupees one Lakh or property worth a Lakh of rupees shall be given to Vijaya and Rama Prasad. The remainder shall be handed over to Renuka Devi. Renuka Devi shall pay Rs.200/-per month to her mother, Saroja, for her maintenance. The properties handed over to Renuka Devi shall be enjoyed by her for life and shall be inherited absolutely by her children.

In case any of my above children leave the Hindu fold or marry a non-Hindu, they will not be entitled to the Legacy conferred by me. On such disqualification, the Legacy will be taken equally by my other children through Saroja.

My son, Matha Prasad, or my daughter, Lalitha, shall not be entitled to any share or interest in the properties left by me.

My last rites shall be performed by Rama Prasad.

I hereby revoke all the previous Wills executed by me. This Will shall take effect only after my lifetime and I reserve the rights to modify or cancel this Will.

In witness whereof, I, the said S.V.Ramakrishnan, have to this my Last Will and Testament set my name this 15th day of July, One Thousand Nine Hundred and Seventy.

Sd/- S.V.Ramakrishnan

Signed by the Testator, S.V.Ramakrishnan and acknowledged by him to be his Last Will and Testament in the presence of us present at the same time, who at his request, in his presence and in the presence of each other, have subscribed our names as Witnesses:

1. Sd/- T.S.Ramadoss

2. Sd/- Dr.R.Paul Doraiswamy, MBBS, BSSC

Seal

Presented at the private residence of Ramakrishnan at No.471, Poonamalle High Road, Madras-10 and fee of Rs.40.00 paid between ... of 5 and 6 Presented 15th day of July 1970

Sd/-

S.V.Ramakrishnan

Reverse of 1st page of the Will:

Executor admittedly S/o S.V.Ramaswamy Mudaliar and now residing at "Rama Mandiram" No.471, Poonamalle High Road, Chennai-10.

Sd/- S.V.Ramakrishnan

Identified by:

Sd/- Dr.R.Paul Doraiswamy, MBBS, BSSc,

S/o Late Mr.V.Rajanna

Assistant Health Officer,

Corporation of Madras.

Res: 25, Chamiers Road, Madras-7.

Sd/- T.S.Ramadoss, S/o Late T.Sadagopan,

Sri Devi Upasakor, Sri Devi Karumariamman Devasthanam,

Thiruverkadu, Madras-56.

15th July 1970. Sd/-

Sub-Registrar.

Registered as No.39 of 1970 of Book 3 Volume 1 pages 287 to 289

16th July 1970.

Sd/-

Sub-Registrar.

Seal " 23. From the above extracted contents of the Will, it is clear that the Will was executed by S.V.Ramakrishnan on 15.07.1970 and it was registered on 16.07.1970 as Document No.39 of 1970. Since both the attesting witnesses to the Will, namely T.S.Ramadoss and Dr.R.Paul Doraiswamy, died, for proving the Will, on the side of the plaintiff, P.W.2 B.Murali Kumar, the grand-son of T.S.Ramadoss, was examined and he deposed in his chief-examination as follows:

"I am the grandson of T.S.Ramadoss. I am well acquainted with his signature. I am filing proof affidavit before the Hon'ble Court and the same may be treated as part of my evidence. Ex.P30 is the third party affidavit filed by me along with OP. My grandfather T.S.Ramadoss was the Correspondent in Jeevarathinammal High School Trust, Thiruverkadu. Ex.P-31 is the letter dated 26.07.1984 written by the Managing Trustee and Correspondent of Jeevarathinammal High School Trust, Thiruverkadu to Mrs.Jaya Srinivasan acknowledging the receipt of donation. (The witness was shown the xerox copy of the Will dated 15.07.1970 and was asked to identify the signature of his grandfather. The witness has identified the signature of his grandfather as attesting witness No.1). Ex.P-32 is the xerox copy of the Will dated 15.07.1970 executed by Mr.S.V.Ramakrishnan in which the signature of T.S.Ramadoss is found as attesting witness No.1 (The original of Ex.P-32 is marked as Ex.P-1)."

24. Further, P.W.2 in his cross-examination has stated as follows:

" .... The writing at page 3 of Ex.P-1 Will, namely "Mr.T.S.Ramadoss, son of late T.Sadagopan, Sridevi Upsagar Sridevi Karumariyamman devasthanam, Thiruverkadu, Madras-56" is the handwriting of my grandfather Mr.T.S.Ramadoss. The signature found at page 2 of the Will Ex.P-1 as an attesting witness No.1 is that of my grandfather Mr.T.S.Ramadoss. I deny the suggestion that the signature of my grandfather in Ex.P1 as well as his signature found at Ex.P-31 are not one

and the same. I deny the suggestion that the name and address of Mr.T.S.Ramadoss written at page 3 of the Will Ex.P-1 is not in the handwriting of my grandfather. I deny the suggestion that since I happened to be the friend of Ramprasad, son of S.V.Ramakrishnan, I have come to Court to given evidence in their favour. "

25. Furthermore, in order to prove the signature of another attesting witness to the Will, namely, Dr.R.Paul Doraiswamy, to the Will, P.W.5 Dr.Philip Rajanna Doraiswamy was examined and in his chief-examination, he has stated as follows:

"I am filing my proof affidavit before this Hon'ble Court and the same may be treated as part of my evidence. I know the signature of my father Dr.Paul Rajanna Doraiswamy. The Will Ex.P-1 was shown to the witness and was asked to identify his father's signature therein. The witness has identified his father's signature in Ex.P-1 as attesting witness No.2. Ex.P-37 is the cumulative record issued to me by Don Bosco Matriculation School, Madras-8 in which my father has signed in the column intended for parents signature at page 3. Ex.P-38 is the third party affidavit signed and filed along with O.P.No.367/2008 which is converted as T.O.S.No.2/2009."

26. Further, P.W.5 in his cross-examination, has stated as follows:

"Dr.R.Paul Doraiswamy had two children. I am the youngest. My elder sister is a doctor. She is a citizen of USA. My father died on 30.04.1979. I met Mr.S.V.Ramakrishnan. Mr.S.V.Ramakrishnan was my father's friend and at that time, I was about 18 years of old and I know Mr.S.V.Ramakrishnan and used to address him as uncle. Both Mr.S.V.Ramakrishnan as well as my father did not mention about the existence of the Will executed by Mr.S.V.Ramakrishnan. The signature of my father Dr.Paul Doraiswamy in Ex.P-1 as well as Ex.P-37 is the same and they do not differ. ... ."

27. On a reading of the above evidence of P.Ws.2 and 5, it is seen that they have filed third party affidavits in the O.P. in Exs.P-30 and P-38 respectively. P.W.2 is the grand-son of the attesting witness to the Will, namely T.S.Ramadoss and P.W.2 has identified the signature of T.S.Ramadoss in Ex.P-1 Will. P.W.5 is the

son of another attesting witness to the Will, namely Dr.R.Paul Doraiswamy and P.W.5 has identified the signature of Dr.R.Paud Doraiswamy in Ex.P-1 Will. In order to prove the signature of the attesting witness--T.S.Ramadoss, P.W.2 has produced the donation receipt, which is marked as Ex.P-31, in which, the signature of the said T.S.Ramadoss if found. Similarly, P.W.5 also produced the cumulative record issued to him by Don Bosco Matriculation School, Chennai, which is marked as Ex.P-37, in which P.W.5's father, i.e. Dr.R.Paul Doraiswamy has signed in the column intended for parents signature. Thus, it is clear that the signatures of both the attesting witness in the above said respective documents, are the same as found in Ex.P-1 Will. Therefore, the signatures of both the attesting witness to the Will, have been proved by P.W.2 and P.W.5 respectively. It is admitted that both the attesting witness to the Will, are not alive at the time of examination of witness in the T.O.S. Even though the Will was registered by the Sub-Registrar, on a reading of the Will, it is clear that the Sub-Registrar has gone to the private residence of the testator S.V.Ramakrishnan at Door No.471, Poonamallee High Road, Madras-10 and in his presence, the Will was executed and it was later on registered as Document No.39 of 1970 in the Sub-Registrar's Office on 16.07.1970 before the Sub-Registrar, Purasawalkam, who has also signed therein. Therefore, Ex.P-1 Will is proved by the plaintiff by adducing oral and documentary evidence regarding the execution of the Will and the signatures of the attesting witness therein, even though the attesting witness are not alive.

28. Even though the Will was executed in 1970, it was produced in the Court in the O.P. proceedings only in 2008, i.e. more than 30 years after the execution of the Will and even though P.Ws.2 and 5 were cross-examined on the side of the defendants, they have not denied that the signatures of the attesting to the Will, are not that of the respective attesting witness.

29. The main allegation raised by the defendants in their written statement is that the Will was executed by the testator upon undue influence. It is admitted case of both sides that S.V.Ramakrishnan, at the time of execution of the Will, was aged about 50 years and the main beneficiary mentioned in the Will is Renuka Devi, who is the plaintiff herein and at that time, she has not completed the age of 18 years. Therefore, it is clear that there cannot be any undue influence by the

beneficiary against S.V.Ramakrishnan to get the Will executed in her favour. Therefore, the argument of the learned Senior Counsels appearing for the defendants that the Will is obtained by undue influence, cannot be accepted.

30. Further, there is a specific clause in the Will regarding exclusion of the defendants, namely Lalitha and Matha Prasad. Moreover, the testator S.V.Ramakrishnan has executed the Will out of free consent and in a sound and disposing state of mind, without any influence of any party. In the above circumstances, it has to be held that Ex.P-1 Will executed by S.V.Ramakrishnan is proved in accordance with law before this Court.

31. From the specific averments made in Ex.P-1 Will, it is seen that there is description of any property. In the Will, it is specifically stated that, "It will not be possible now to detail the properties, immovable, movable, cash, etc., that I may die possessed of. Hence I do not propose to detail them." It is further stated in the Will as follows:

All the properties, immoveable, cash in Bank, Securities, moveables, such as furniture, paintings, shares, etc., I hereby bequeath as follows:-

All the properties on the date of my death shall be taken over by the Official Trustee, or such officer or person appointed by Court, and he shall deal with them as follows:-

(a) The Official Trustee shall pay Rs.200/- a month to Srimathi Saroja who is living with me as my wife.

(b) The Official Trustee shall pay for the education and maintenance of my children through Saroja, i.e. Vijaya, Rama Prasad and Renuka Devi.

(c) The properties shall be held by the Official Trustee till my youngest daughter Renuka completes the age of 18. Then a sum of Rupees one Lakh or property worth a Lakh of rupees shall be given to Vijaya and Rama Prasad. The remainder shall be handed over to Renuka Devi. Renuka Devi shall pay Rs.200/-per month to her mother, Saroja, for her maintenance. The properties handed over to Renuka Devi shall be enjoyed by her for life and shall be inherited absolutely by her

children.

In case any of my above children leave the Hindu fold or marry a non-Hindu, they will not be entitled to the Legacy conferred by me. On such disqualification, the Legacy will be taken equally by my other children through Saroja. ...."

32. Hence, as per the above recitals in Ex.P-1 Will, it is clear that it does not contain any list of properties--movables, immovables, cash, etc., and the testator S.V.Ramakrishnan has given certain conditions in the Will, as extracted above, regarding the devolving of the properties to the beneficiary/beneficiaries on the date of his death. It is seen that there are four suit properties in the T.O.S (as mentioned in the affidavit of assets filed along with O.P). Regarding item Nos.3 and 4 of the suit properties, which are mentioned in the affidavit of assets filed along with O.P. (T.O.S), on verification of the records, i.e. the copy of the judgment, dated 10.11.1965 in C.S.No.43 of 1962, marked in Ex.P-72 = Ex.D-14, it is seen that item No.1 mentioned in suit schedule property in C.S.No.43 of 1962 is item No.4 as mentioned in the affidavit of assets filed along with O.P (T.O.S) and item No.2 mentioned in the suit schedule in C.S.No.43 of 1962 is item No.3 as mentioned in the affidavit of assets filed along with O.P (T.O.S). It is admitted by both sides that at the time of execution of the Will, those items 3 and 4 of the suit properties (affidavit of assets filed along with O.P (T.O.S)) are the respective suit schedule properties in C.S.No.43 of 1962 and C.S.No.43 of 1962 was pending in the stage of appeal before the Supreme Court, as detailed in the earlier paragraphs of this judgment and the Civil Appeal No.224 of 1974 was disposed of by the Supreme Court on 17.04.1995. Ex.P-29 is the copy of the said judgment, dated 17.04.1995 rendered by the Supreme Court in Civil Appeal No.224 of 1974, whereas the Will is dated 15.07.1970 and in the meantime, the testator S.V.Ramakrishnan died on 31.12.1980. Therefore, upto the date of the judgment of the Supreme Court in Civil Appeal No.224 of 1974, both the plaintiff and the defendants have no right, title or interest over the suit properties in item Nos.3 and 4. Hence, it is clear that S.V.Ramakrishnan has not possessed of item Nos.3 and 4 of the suit properties in T.O.S (O.P) at the time of execution of the Will, which does not even contain any specific properties that he might have been possessed of at the time of his death. Therefore, this Court is of the considered view that

items 3 and 4 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P) are not covered under Ex.P-1 Will, since they are not specifically stated in the Will.

33. On the side of the plaintiff, they have produced Ex.P-11 copy of the registered family settlement deed in Document No.1305 of 1970, dated 22.05.1969, entered into between the plaintiff's father and the second defendant. In the said Ex.P-11 family settlement deed, the deceased S.V.Ramakrishnan was shown as party of the first part and his son-Matha Prasad, who is the second defendant herein, was shown as party of the second part. In the said Ex.P-11 family settlement deed, it is stated as follows:

"... .... the parties herein being members of an ancient and respectable family have with a view to avoid wasteful litigation and for the sake of peace and preservation of the honour and dignity of the family have after prolonged discussions agreed to settle their differences as evidenced by this family Arrangement and agreement Now by this deed witnesseth

(1) the party of the second part shall hereafter possess and enjoy the the properties set out in the schedule here to as full owner thereof and shall take the same absolutely with all powers of alienation such as sale gift mortgage will or otherwise in full quit and final settlement of all his claims.

(2) The party of the first part releases and relinquishes all his rights title and interest in the properties mentioned in schedule hereunder. The party of the second part shall seize the properties mentioned in the schedule hereunder and shall possess and enjoy the same absolutely and the party of the first part shall not in any way interfere in respect of the properties mentioned in the schedule hereunder.

(3) The party of the second part shall also be entitled to withdraw a sum of Rs.45,000/- only from and out of the additional compensation now awarded in A.S.No.428 of 1963 high court, Madras. He shall not be entitled to any further sum or to costs of the appeal.

(4) The party of the second part shall have no manner of right title interest or claim to the properties or offices following from the estate of S.V.Ramaswamy Mudaliar and now held by the party of the first part or any property immoveable moveable compensation costs cash amounts in Court Deposit etc or to any office held now by the party of the first part or that he may get as a result of the litigation now pending except the properties that are mentioned in the schedule hereunder and the sum of Rs.45,000/- mentioned in clause 3 supra the party of the second part hereby releases and relinquishes all right title benefit or claim that he may have to all other properties inmoveable and moveable now held by the party of the first part and to all the properties offices rights title benefits claims compensations costs amounts in Court deposit etc. that the party of first part may get himself and or out of the benefits following from the estate of S.V.Ramaswamy Mudaliar and or as a result of the litigations now pending the party of second party also hereby releases and relinquishes in favour of the party of first part all the properties benefit cost etc. that may be got in litigations now pending in which the party of the second part is a party. The party of the second part shall not also be a heir to the estate of the party of the first part. ...."

34. Further, on a perusal of the schedule mentioned properties in Ex.P-11 family settlement deed, it is seen that item Nos.1 and 2 of the suit properties herein (i.e. affidavit of assets in O.P.No.367 of 2008 / T.O.S.No.2 of 2009) are not stated as properties in the said family settlement deed as belonging to Late S.V.Ramaswamy Mudaliar. Further, after the said family settlement deed, the second defendant herein, namely S.V.Matha Prasad has filed a suit in C.S.No.99 of 1971 against the father of the plaintiff and the defendants herein, namely S.V.Ramakrishna Mudaliar and the plaint copy in C.S.No.99 of 1971 is marked as Ex.P-12. The said suit in C.S.No.99 of 1971 was filed for declaration that the plaintiff therein (S.V.Matha Prasad) is entitled to one half in the joint family properties of Late Sri.S.V.Ramaswami Mudaliar, described in the schedules therein and also for other reliefs. In the said suit in C.S.No.99 of 1971, the defendant therein, namely S.V.Ramakrishna Mudaliar has filed written statement, the copy of which is marked as Ex.P-13. In the said written statement, S.V.Ramakrishna Mudaliar has stated in paragraph 21 that, "The plaintiff cannot maintain this action unless and until settlement deed executed by him is set aside.

The present suit is therefore not maintainable." Subsequently, the said suit in C.S.No.99 of 1971 was dismissed as not pressed being settled out of Court, on 30.10.1972, which is marked as Ex.P-14.

35. Therefore, from the above documents, it is clear that the second defendant herein has released and relinquished his rights as per Ex.P-11 family settlement deed and hence, he has no right or claim over the properties even allotted to S.V.Ramaswamy Mudaliar, who was the father of the plaintiff and the defendants herein. Thus, the argument of the learned Senior Counsels appearing for the defendants that items 1 and 2 of the suit properties in T.O.S. are joint family properties and the parties are entitled for partition of the same, and that the testator S.V.Ramakrishnan cannot bequeath the properties by way of the Will executed by him, is not sustainable. As already stated, Ex.P-11 family settlement deed was executed between the father-S.V.Ramakrishnan and son-Matha Prasad (second defendant herein) and subsequently, the second defendant-S.V.Matha Prasad filed C.S.No.99 of 1971, which was dismissed as not pressed being settled out of Court, which is evident from Ex.P-14 judgment copy in C.S.No.99 of 1971, dated 30.10.1972. In view of all these facts, the argument of the learned Senior Counsels appearing for the defendants that the item Nos.1 and 2 of the suit properties in T.O.S. were in the hands of the testator S.V.Ramakrishnan and they cannot be treated as his separate properties and they are joint family properties and that the defendants have every right and share in the properties and they cannot be bequeathed by the testator, is not acceptable.

36. After the death of the testator S.V.Ramakrishnan on 31.12.1980, Mrs.Saroja and others, including the plaintiff and the defendants herein, executed the following sale deeds (Exs.P-15 to P-18) and the relevant portion of the recitals therein are extracted here under :

(i) Sale deed, dated 01.07.1983 in favour of M/s.Kumaran Ilam -- copy of which is marked as Ex.P-15:-

"THIS DEED OF SALE executed at Madras on this 1st day of July one Thousand Nine Hundred and Eighty Three by (i) Mrs.Saroja, wife of late S.V.Ramakrishna Mudaliar, aged about 43 years, residing at 868, Poonamallee High Road, Kilpauk,

Madras-600 010, hereinafter called the "FIRST VENDOR"

1) P.DWARAGANATH REDDY,

2) P.G.Saranyan,

3) Matha Prasad, partner for Lakshmi Builders

(2) Miss Vijaya, daughter of S.V.Ramakrishna Mudaliar, aged about 25 years, residing at 869, Poonamallee Road, Madras-600 010, hereinafter called the "SECOND VENDOR",

(3) Rama Prasad, son of Late S.V.Ramakrishna Mudaliar, aged about 23 years, residing at Door No.869, Poonamallee High Road, Kilpauk, Madras-600 010 -- hereinafter called the "THE THIRD VENDOR"

(4) Miss Renuka Devi, daughter of late S.V.Ramakrishna Mudaliar, aged about 21 years, residing at No.869, Poonamallee High Road, Madras hereinafter called the "FOURTH VENDOR"

(5) Dhanurmathi, minor, aged about 11 years, represented by her mother and natural guardian Mrs.Saroja the First Vendor herein, and hereinafter referred to as the "FIFTH VENDOR" , Vendors 1 to 5 represented herein by their duly constituted Power of Attorney Agent P.Dwarakanath Reddy, under a General Power of Attorney dated 1.12.1982

(6) Mrs.Lalitha, wife of Ekambaram, aged about 42 years, residing at No.919, Poonamallee High Road, Madras, hereinafter called as the "SIXTH VENDOR",

(7) Matha Prasad, son of late S.V.Ramakrishna Mudaliar, aged about 39 years, residing at No.919, Poonamallee High Road, Madras hereinafter called "SEVENTH VENDOR", the sixth and seventh Vendors represented herein by their duly constituted Power of Attorney Agent, P.G. Saranyan, under a General Power of Attorney dated 15th March '82 and Registered as Document No.67 of .... in the Sub-Registrar Office of the Purasawalkam the term First to Seventh Vendors wherever the context so require, mean and include their respective heirs, administrators, executors, legal representatives and assigns of the ONE PART

and LAKSHMI BUILDERS, a Partnership Firm, registered under the Indian Partnership Act and having its office at 625, Mount Road, Madras-6 and represented herein by its Partner... P.G.Saranyan, hereinafter referred to as the "CONFIRMING PARTY", which expression shall wherever in the context require mean and include their respective heirs, executors, administrators, legal representatives and assigns of each and every one of the Partners of the said Firm, LAKSHMI BUILDERS ... of the second part and M/s.KUMARN ILAM a Partnership Firm registered under the Indian Partnership Act, 1982, having its office at No.98, Secretariat Colony, Madras 600 010 and represented ... by its Partner Mr.K.M.Chenniappan hereinafter referred to as the "PURCHASER, which expression shall wherever the context mean and include its successors-in-interest and assigns of the .... part: WHEREAS the property, more particularly described in Schedule-A hereunder .. hereinafter referred to as the "SCHEDULE-A PROPERTY", was owned absolutely by late S.V.Ramakrishna Mudaliar. WHEREAS the said late S.V.Ramakrishna Mudaliar entered into an agreement of sale dated 30.07.1980, agreeing to sell the Schedule-A Property to the confirming party for consideration of Rs.37,50,000/- free from all encumbrances; WHEREAS THE Party of the confirming party obtained the assignment ... mortgage decree in C.S.No.281/77 obtained by the First Mortgagee against late S.V.Ramakrisha Mudaliar in respect of the Schedule-A Property; WHEREAS the said S.V.Ramakrishna Mudaliar died on 31.12.1980, leaving behind him the Vendors 1 to 7 as the only legal heirs; WHEREAS the first vendor is the 2nd wife of the said S.V.Ramakrishna Mudaliar and the second to fifth vendors are children of the said S.V.Ramakrishna Mudaliar through the First Vendor; WHEREAS the late Ramakrishna Mudaliar had executed a Will dated 15.07.1970 nominating the First to Fifth vendors as his only legatees; WHEREAS the Will is yet to be probated; WHEREAS the First to Fifth venodrs have confirmed the terms of the agreement of sale executed by the late S.V.Ramakrishna Mudaliar, dated 30.07.1980 and confirmed the same in writing by a Rectification Deed dated 18.02..... the Sixth vendor and the seventh vendor are also the children of the said late S.V.Ramakrishna Mudaliar through his first wife Rajalakshmi who died in March 1952 and claimed that they are legal representatives of late S.V.Ramakrishna Mudaliar;. ...."

(ii) Sale deed, dated 15.02.1985 in favour of one Palanisamy, copy of which is marked as Ex.P-16:

"THIS DEED OF SALE executed at Madras on this 15th day of February 1985 by

1) Mrs.Saroja, wife of late S.V.Ramakrishna Mudaliar, Hindu, aged about 44 years,

2) Vijaya, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 26 years,

(3) Ramaprasad, son of late S.V.Ramakrishna Mudaliar, Hindu, aged about 24 years,

4) Renuka Devi, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 22 years,

5) Minor Danurmathi, daughter of late Ramakrishna Mudaliar, aged about 12 years, and represented by Mother and Guardian Mrs.Saroja - First vendor herein all residing at 868, Poonamallee High Road, Madras-600 010,

6) Mrs.Lalitha, wife of G.Ekambaram Mudaliar, Hindu, aged about 43 years, and

7) Mathaprasad, son of late S.V.Ramakrishna Mudaliar, Hindu, aged about ... years, both residing at No.919, Poonamallee High Road, Madras-600 010; hereinafter CALLED THE "VENDORS" (ii) M/S.LAKSHMI BUILDERS, a Partnership Firm, registered under the Indian Partnership Act, 1982, having its office at 624, Anna Salai, Madras-600 006 and represented herein by its Partners (i) Mr.P.G.Saranyan, (ii) Mr.Premchand ... their Agreement-holders having its office at 609, Mount Road, Madras-600 006,

(5) Mr.Sanku Subbalaxmiah residing at No.16, Venkatanarayana Road, Madras-600 017, hereinafter collectively referred to as the Party of the CONFIRMING PART, TO AND IN FAVOUR OF THIRU.S.PALANISAMY, S/o S.Subbiah Gounder, Hindu, 40 years, residing at No.11 Gajapathy Street, Madras-10

(6) hereinafter the "PURCHASER, the terms "VENDORS, CONFIRMING PART AND PURCHASER" shall mean and include their successors-in-office, legal representatives and assigns. WHEREAS the property, more fully described in ...

(7) the Schedule under originally belonged to late S.V.Ramakrishna Mudaliar; WHEREAS the said Ramakrishna Mudaliar entered into an agreement of sale dated 30.07.1980 agreeing to sell the A-schedule mentioned property to the Confirming Party; WHEREAS the Confirming Party were also put in possession of the C-Schedule property as part performance of the agreement of sale; WHEREAS the said Ramakrishna Mudaliar died on 31.12.1980, WHEREAS the Vendors 6 to 7 are the children of late S.V.Ramakrishna Mudaliar ... his first wife; WHEREAS the Vendors 1 to 5 are the second wife and children of deceased Ramakrishna Mudaliar; WHEREAS after the death of Ramakrishna Mudaliar the VENDORS 1 to 5 claimed to have succeeded to his property to the exclusion of ... 6 and 7; WHEREAS the VENDORS 1 to 5 represented that late Ramakrishna Mudaliar has left behind Will dt.15.7.1970 in which the VENDOR No.4 has been - appointed as executrix; WHEREAS the Will has not yet been probated; WHEREAS the VENDORS 1 .... not want to apply for probate of the Will as far as the properties forming part of A-Schedule property is concerned as all the legal heirs of late S.V.Ramakrishna Mudaliar - including VENDORS 6 and 7 have accepted and ratified the agreement of sale.... 1980 by late S.V.Ramakrishna Mudaliar in favour of the Confirming Party and have agreed and register the sale deed or sale deeds in favour of the Confirming Party of their nominee or nominees; .....

(iii) Sale deed, dated 09.02.1987 in favour of Mrs.Gita Ravichandran, copy of which is marked as Ex.P-17:-

This DEED OF SALE EXECUTED AT MADRAS on the 9th day of February ... by 1) Mrs.Saroja, wife of late S.V.Ramakrishna Mudaliar, Hindu, aged about 45 years, 2) Vijaya, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 27 years, 3) Ramaprasad, son of late S.V.Ramakrishna Mudaliar, Hindu, aged about 25 years, 4) Renuka Devi, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 23 years, 5) Minor Danurmathi, daughter of late

S.V.Ramakrishna Mudaliar, Hindu, aged about 13 years and represented by Mother and Guardian Mrs.Saroja the first vendor herein, .. residing at 868, Poonamallee High Road, Madras-600 010 6) Mrs.Lalitha, wife of G.Ekambaram Mudaliar, Hindu, aged about 43 years and 7) Mathaprasad, son of late S.V.Ramakrishna Mudaliar, Hindu, aged about 41 years, both residing at 919, Poonamallee High Road, Madras 600 010, hereinafter called the VENDORS TO AND IN FAVOUR OF Mrs.Gita Ravichandran, wife of G.Ravichandran, Hindu, aged about 26 years, residing at No.19, Subba Naidu Street, Choolai, Madras-600 112 hereinafter referred to as the PURCHASER .... terms VENDORS and PURCHASER shall mean and include their successors-in-office, legal representatives and assigns, WHEREAS the property more fully described in the schedule 'A' hereunder ... the absolute property of the VENDORS herein. WHEREAS the VENDORS offered to sell the 9th undivided share of the B Schedule property together with a right over the open space around the B Schedule property coloured GREEN and common right over the passage coloured .... in the sketch for a total price of Rs.10,471/- (Rupees ten thousand four hundred and seventy one only) paid by the Purchaser to the Vendor .... the execution of these presents, the receipt whereof the Vendors doth hereby acknowledge..... .... "

(iv) Sale deed, dated 21.10.1989 in favour of Mrs.Padmavathi, copy of which is marked as Ex.P-18:-

This DEED OF SALE EXECUTED AT MADRAS on the 21st day of October 1989 by

1) Mrs.Saroja, wife of late S.V.Ramakrishna Mudaliar, Hindu, aged about 45 years,

2) Vijaya, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 27 years,

3) Ramaprasad son of late S.V.Ramakrishna Mudaliar, Hindu, aged about 25 years,

4) Renuka Devi, daughter of late S.V.Ramakrisha Mudaliar, Hindu, aged about 23 years,

5) Minor Danurmathi, daughter of late S.V.Ramakrishna Mudaliar, Hindu, aged about 13 years and represented by Mother and Guardian Mrs.Saroja, the first Vendor herein, all residing at 868, Poonamalle High Road, Madras 600 010

6) Mrs.Lalitha, wife of G.Ekambaram Mudaliar, Hindu, aged about 43 years, and

7) Mathaprasad, son of late S.V.Ramakrishna Mudaliar, Hindu, aged about 41 years, both residing at No.919, Poonamalle High Road, Madas 600 010, hereinafter called the VENDORS TO AND IN FAVOUR OF MRS.PADMAVATHI, wife of Mr.M.K.Ramachandran, Hindu, aged about 40 years, residing at .... Ranganathan Avenue, Kilpauk, Madras 600 010 hereinafter referred to as the PURCHASER ... the VENDORS and purchaser shall mean and include their successors-in-office, legal representatives and assigns. WHEREAS the property are more fully described in the Schedule 'A' hereunder ... the absolute property of the VENDORS herein. WHEREAS the VENDORS offered to sell the 830/70800th undivided share of the B schedule property together with a right over the open space and the B schedule property coloured GREEN and common right over the passage coloured BLUE in the sketch for a total price of Rs.9,710/- (Rupees nine thousand seven hundred and ten only) ... by the purchaser to the vendors before the execution of these presents, the receipt where the vendors doth hereby acknowledge, the vendor doth hereby sell, convey, transfer, grant... assign unto the purchaser 830/70800th undivided share of the said piece and parcel of land described in the 'B' schedule hereunder i.e. property mentioned in 'C' schedule hereunder, together with all rights in common with the Purchaser or owners of the other undivided shares in the said piece and parcel of land morefully described in the Schedule 'B' hereunder and other ... persons thereto lawfully entitled to possess and enjoy all common roads, ways water, ... courses, easements, advantages, liberties rights and privileges in anywise appertaining to or usually enjoyed therewith and all the estate, right, title claim and demands of the .... into and upon the said property hereby sold unto the use of the Purchasers and a common right over the open space of 20 ft. around the building marked GREEN in

the plan attached and common right over the 33 ft. passage marked BLUE in the plan attached ... TO HAVE AND TO HOLD the said undivided share absolute and forever free from all encumbrance, charges, trusts, lines, claim, demands whatsoever. The Vendors doth hereby assure ... with the purchasers that they are the sole and absolute owners having a good and subsisting right, title and interest to convey the property morefully described in Schedule 'B' .... That the purchaser shall peacefully and quietly possess enter into retain, hold, use and .... the same as the purchaser's own property without any let, hindrance, interruption, claim ... damage from the vendors or any other person claiming in trust for the vendors. That the .... note done or knowingly suffered any act, deed or things whereby the property conveyed here.... may be encumbered affected in impeached in title or otherwise and that the Vendors hereby ... and declare that the said property is not subject to any lien, encumbrance charge, attach .... or lispendens. The original documents relevant to the title of the property shall be .... by the promoter, which shall be open to inspection by the purchaser at any reasonable time. The Vendors at all times will indemnity and save harmless and keep the Purchaser well and ... cliently indemnified against all losses, damages costs and expenses which the purchaser ... sustain or be put to by reason of any encumbrance or defect in title to the property conveyed hereunder. The Vendors doth hereby assure the purchaser that the vendors have duly paid and discharged or will duly pay and discharge all taxes, rents and other ...outgoings payable to the Municipal, Revenue, Urban and other Authorities levied in respect of the property upto date of sale and Purchaser shall be liable to pay all such taxes, rate, ... and other outgoings that may be levied hereafter in respect of the land hereby sold. ..... "

37. On a reading of the above said four sale deeds in Exs.P-15 to P-18, more particularly,

Ex.P-15 sale deed, dated 01.07.1983, it is clear that S.V.Ramakrishnan's wife, namely Saroja and her children, including the plaintiff and the defendants herein, have jointly executed the sale deed in favour of the respective parties. It is also stated in the said sale deed that the first vendor therein (Saroja) is the second wife of the testator in this T.O.S., namely late S.V.Ramakrishnan, who died on 31.12.1980, leaving behind him the vendors 1 to 7 (Saroja, Vijaya, Rama Prasad,

Renuka Devi (plaintiff), Dhanurmathi, Lalitha (first defendant) and Matha Prasad (second defendant)) as specified in the said sale deed as legal heirs/children of late S.V.Ramakrishnan and it is specifically stated that the first vendor-Saroja is the second wife of the said S.V.Ramakrishna Mudaliar and the second to fourth vendors are children of the said S.V.Ramakrishna Mudaliar through the first vendor-Saroja. It is also further clear from the said sale deed that late S.V.Ramakrishna executed the Will, dated 15.07.1970, nominating the above said first to fifth vendors as his legatees and it is specifically stated therein that the Will is yet to be probated. It is also stated in the said sale deed that the terms of the agreement of sale executed by late S.V.Ramakrishna Mudaliar, dated 30.07.1980, were confirmed in writing by a Rectification Deed as specified therein. It is further stated in the said sale deed that the Sixth vendor (Lalitha) and the seventh vendor (Matha Prasad) are also the children of late S.V.Ramakrishna Mudaliar through his first wife--Rajalakshmi, who died in March 1952 and claimed that they are legal representatives of late S.V.Ramakrishna Mudaliar. Hence, it is clear that there is a mention of the Will, dated 15.07.1970 in the said sale deed and the names of the defendants 1 and 2 herein have been specified in those sale deeds as co-executants of the relevant documents.

38. It is further to be noted that M/s.Lakshmi Builders, represented by its partner, filed a Civil Suit before this Court in C.S.No.469 of 1981, against Saroja and her children and another, including the plaintiff and the defendants 1 and 2 herein, for specific performance and the copy of the plaint in the said C.S.No.469 of 1981 is marked as Ex.P-25 and the copies of the orders, dated 17.03.1982 and 12.02.1997 passed in the said C.S.No.469 of 1981 are marked as Exs.P-26 and 27, which are based on compromise between the parties and settled out of Court. Hence, it is clear that after the death of the testator S.V.Ramakrishna Mudaliar, M/s.Lakshmi Builders filed the said suit against the heirs of the deceased S.V.Ramakrishna Mudaliar and subsequently, the said suit was disposed of based on the compromise between the parties and settled out of Court, which is evident from the above said orders passed in the said suit in C.S.No.469 of 1981, which is marked as Exs.P-26 and P-27.

39. It is further seen that the first defendant herein filed a Civil Suit before this Court seeking permission to sue as an indigent person, declaration, permanent injuctions, directions etc., against the plaintiff herein and the second defendant herein and others, and the copy of the plaint in the said Civil Suit is marked as Ex.P-45. It is also seen that the present defendants filed a suit in O.S.No.6784 of 1996 before the City Civil Court, Madras, against Rama Prasad, Saroja, Vijaya and Renuka Devi (plaintiff herein) for declaration that the plaintiffs therein (defendants herein) are the legal heirs of late S.V.Ramakrishna Mudaliar and as such, they have all legal rights over all the properties left by the said S.V.Ramakrishna Mudaliar and also for consequential injunction restraining the defendants therein (plaintiff herein and others) from in any manner interfering with any of the properties left by the said S.V.Ramakrishna Mudaliar and the copy of the plaint in that suit in O.S.No.6784 of 1996 is marked as Ex.P-46 and the clean copy of the plaint fled in O.S.No.6784 of 1996 is marked as Ex.P-53. The copy of the written statement filed by the defendants 1 and 2 therein, namely Ram Prasad and Saroja in O.S.No.6784 of 1996 is marked as Ex.P-47. Subsequently, by order dated 01.08.2007 (Ex.P-48), the plaint in said suit in O.S.No.6784 of 1996 was returned for being presented before a proper forum, as that Court had no pecuniary jurisdiction to try the suit. Therefore, it is clear that after the death of the testator S.V.Ramakrishnan, both the defendants herein have filed the said suit in O.S.No.6784 of 1996, which was returned for presentation before proper forum. But, there is no evidence placed on record before this Court to show that the said plaint in O.S.No.6784 of 1996 was subsequently re-presented before proper Court.

40. As already observed in the earlier paragraphs, the deceased S.V.Ramakrishnan and the second defendant-S.V.Mathaprasad earlier filed a suit in C.S.No.43 of 1962 before this Court against Buhari and another, for re-conveyance of the properties mentioned therein, for directions, etc., the copy of the plaint in C.S.No.43 of 1962 is marked as Ex.P-71 = Ex.D-13; the said suit in C.S.No.43 of 1962 was decreed by this Court and the copy of the decree, dated 10.11.1965 passed in C.S.No.43 of 1962 is marked as Ex.P-72 = Ex.D-14. As against the said decree, dated 10.11.1965 passed in C.S.No.43 of 1962, the appeals in O.S.A.Nos.8 and 9 of 1966 were preferred, which were disposed of by the Division Bench of this Court on 10.05.1972, against which, Civil Appeal No.224

of 1974 was preferred before the Supreme Court. Though the said suit in C.S.No.43 of 1962 was initially decreed by the learned single Judge of this Court, the same was disposed of the Division Bench of this Court in O.S.A.Nos.8 and 9 of 1966, but subsequently, the Supreme Court in the said Civil Appeal No.224 of 1974, by judgment dated 17.04.1995, set aside the judgment of the Division Bench of this Court and restored the judgment of the learned single Judge of this Court in the said Civil Suit No.43 of 1962. The judgment dated 17.04.1995 passed by the Supreme Court in Civil Appeal No.224 of 1974 is marked as Ex.P-28, with amended cause title therein, which is marked as Ex.P-29. In this regard, it is worthwhile to extract the prayer and decree, dated 10.11.1965 passed by the learned single Judge of this Court in the said Civil Suit No.43 of 1962, in which the second defendant herein was the co-plaintiff:

Prayer in C.S.No.43 of 1962:

"Suit praying for Judgment and Decree:

(i) directing the defendants or the first defendant with the concurrence of the second defendant to re-convey the properties described in Schedule 'A' hereunder to the plaintiffs or to the first plaintiff receiving the sum of Rs.1,15,500/- and on such terms as to this Hon'ble Court may deem fit and proper;

(ii) directing the defendants to deliver possession of the 'A' Schedule properties to the plaintiffs on such re-conveyance;

(iii) directing the defendants to pay the plaintiffs the income from the said properties as and from the date of the plaint;

(iv) directing the defendants to pay the plaintiffs the costs of the suit;

(v) and pass such further or other orders as may be just and proper in the circumstances of the case."

Decree, dated 10.11.1965 in C.S.No.43 of 1962:

It is declared, ordered and decreed as follows:

(1) That plaintiff herein is entitled to specific performance of the agreement dated 24.03.1959 entered into with the plaintiff by defendants herein, to re-convey the properties set out in the Schedule hereunder;

(2) That the defendants herein do (a) execute a proper re-conveyance of the properties more particularly described in the Schedule hereunder, in favour of the plaintiff herein according to the agreement aforesaid dated 24.03.1959 and (b) deliver possession to the said plaintiff herein, the said properties as set out in the said Schedule hereunder, immediately after such re-conveyance;

(3) that the income in respect of the aforesaid properties from 23.03.1962 (the date of the plaint) till date of delivery of possession and the same shall be ascertained in due course;

(4) that the defendants herein, shall be entitled to withdraw the sum of Rs.1,15,500/- (Rupees one lakh fifteen thousand and five hundred only) now in Court deposit, after they execute the sale deed as directed in Clause (2) supra;

(5) That the defendants, do also pay to the plaintiffs herein the costs of the suit when taxed and noted in the margin hereof, and

(6) That the defendants do bear their own costs in this suit. "

41. Subsequent to the above said judgment of the Supreme Court in the said Civil Appeal, by which the above extracted judgment/decree of the learned single Judge of this Court in C.S.No.43 of 1962 was restored, E.P.No.48 of 1997 in C.S.No.43 of 1962 was preferred by S.V.Ramakrishna Mudaliar (since deceased) and S.V.Matha Prasad, the second defendant herein, and the order dated 07.07.2000 passed in the said E.P. is marked as Ex.D-6 and in the said E.P., various applications were filed and disposed of by this Court.

42. Therefore, as per the above judgment of the Supreme Court in the said Civil Appeal, by which, the said judgment of the learned single Judge of this Court was restored, the present second defendant-S.V.Matha Prasad is a joint decree-holder for items 3 and 4 of the suit properties (affidavit of assets in O.P.) in this T.O.S., which are the very same suit properties in the said suit in C.S.No.43 of 1962,

which is not disputed by either side and ultimately, the decree dated 10.11.1965 passed in C.S.No.43 of 1962 is being enforced against the defendants therein in C.S.No.43 of 1962. It has been already held by this Court that items 3 and 4 in the present suit properties in the T.O.S. (as specified in the affidavit of assets filed along with the O.P), are not the properties possessed of by late S.V.Ramakrishna as on the date of his death, and hence, as far as the remaining suit properties in items 1 and 2 in the T.O.S. (as specified in the affidavit of assets filed along with the O.P), the legal heirs of the deceased S.V.Ramakrishnan, including the plaintiff herein and the defendants herein, are entitled to their respective shares and get the benefits therein out of the same.

43. In this case, admittedly S.V.Saroja had been living as the second wife of the deceased S.V.Ramakrishnan, the testator. Even the deceased-testator-S.V.Ramakrishnan has specifically mentioned in his Will Ex.P-1 that they were living as husband and wife, even though there was no marriage between them and there is no specific mention in Ex.P-1 Will that she is the second wife. Further, even though in the sale deeds in Exs.P-15 to P-18, there is a mention that she is the second wife of late S.V.Ramakrishnan and since it is also stated in one of those sale deeds that the Will is yet to be probated (i.e. the prayer in the O.P. (T.O.S) is for grant of Letters of Administration in respect of the Will), the other disputes between the parties regarding title, relevant status of the parties, etc., cannot be gone into and decided by this Court in this T.O.S.

44. In view of the above discussion and observations made, this Court is of the considered view that items 1 and 2 of the suit properties in the T.O.S (as mentioned in the affidavit of assets filed along with the O.P) are separate properties of the deceased S.V.Ramakrishnan and he had every right to execute Ex.P-1 Will. As far as items 3 and 4 of the suit properties in the T.O.S (as mentioned in the affidavit of assets filed along with the O.P), which are the subject matter of suit in C.S.No.43 of 1962 and which were not in possession of the deceased-testator-S.V.Ramakrishnan at the time of his death, as specified in Ex.P-1 Will by him, those items 3 and 4 are not covered under Ex.P-1 Will. Therefore, as far as items 3 and 4 of the suit properties herein, the same have to be dealt with as if the testator-S.V.Ramakrishnan died intestate.

45. The testator-S.V.Ramakrishnan himself admitted in the Will that Vijaya alias Vijaya Lakshmi, Ramprasad and Renuka Devi are his children, and on the side of the plaintiff, their respective Birth Certificates have been marked as Exs.P-7 to P-9 and the consent affidavits of S.V.R.Saroja (wife of S.V.Ramakrishnan), Vijaya Lakshmi alias Vijaya and S.V.R.Ramprasad, for grant of Letters of Administration in favour of the plaintiff, have also been marked as Exs.P-2 to P-4. Though Dhanurmathi is shown as one of the daughters of the deceased S.V.Ramakrishnan in the affidavit filed in support of the O.P (T.O.S) and her Birth Certificate has also been marked as Ex.P-10 in this T.O.S. and that she has also filed her consent affidavit for grant of Letters of Administration in favour of the plaintiff, which has been marked as Ex.P-5, there is no mention about her in Ex.P-1 Will.

46. All the above facts clearly show that the plaintiff-Renuka Devi has filed the O.P.(T.O.S) for grant of Letters of Administration in her favour based on Ex.P-1 Will executed by the deceased S.V.Ramakrishnan and that, her mother S.V.R.Saroja, her sister Vijaya Lakshmi alias Vijaya, her brother S.V.R.Ramprasad and her another sister Dhanurmathi have filed their respective consent affidavits for grant of Letters of Administration in favour of the plaintiff, which are marked as Exs.P-2 to P-5. As per the Will executed by the testator-S.V.Ramakrishnan, the properties handed over to the plaintiff, shall be enjoyed by her for life and they shall be inherited absolutely by her children. It is also seen that the children of the plaintiff-Renuka Devi, namely N.Dheeraj Kumar and N.Divya Deepa, have also filed consent affidavits for grant of Letters of Administration in favour of the plaintiff, which are marked as Exs.P-34 and P-35 respectively. The Birth Certificates of the said N.Dheeraj Kumar and N.Divya Deepa have also been marked as Exs.P-33 and P-36. Thus, it is clear that except the defendants herein, all the other legal heirs of the deceased S.V.Ramakrishnan, including the children of the plaintiff, have given their respective consent affidavits for grant of Letters of Administration in favour of the plaintiff herein. Moreover, there are also third party affidavits of P.Ws.2 and 5, who are the grand-son of the attesting witness No.1 (T.S.Ramadoss) to the Will and son of the attesting witness No.2 (Dr.R.Paul Doraiswamy), which are marked as Exs.P-30 and P-38 and P.Ws.2 and 5 have confirmed the signatures of those attesting witness.

47. From all the above facts and circumstances of the case, it has to be concluded that the plaintiff has proved the Will in accordance with law and she is entitled for grant of Letters of Administration in her favour only in respect of items 1 and 2 of the suit properties (i.e. items 1 and 2 of the affidavit of assets filed along with the O.P) and she is not entitled for grant of Letters of Administration insofar as items 3 and 4 of the suit properties (i.e. items 3 and 4 of the affidavit of assets filed along with O.P). Accordingly, the application filed by the second defendant in A.No.4458 of 2014 in T.O.S.No.2 of 2009, filed for rejecting the plaint in T.O.S.No.2 of 2009 with regard to items 3 and 4 of the suit properties (as mentioned in the affidavit of assets filed along with O.P) is allowed and consequently, T.O.S.No.2 of 2009 has to be decreed only to the extent indicate above.

48. Learned Senior Counsels appearing for the defendants contended that as far as the delay in filing the O.P (T.O.S) by the plaintiff for grant of Letters of Administration in her favour, is concerned, it is seen that Ex.P-1 Will was executed by the testator-S.V.Ramakrishnan on 15.07.1970, which was registered on 16.07.1970 and the testator died on 31.12.1980. It is to be noted that the Original Petition in O.P.No.367 of 2008, which was subsequently converted as T.O.S.No.2 of 2009, was filed on 18.12.2006 and it was subsequently re-presented on various dates. Thus, the O.P. for grant of Letters of Administration is filed by the plaintiff in 2006, i.e. after 26 years from the date of the death of the testator, which was in 1980. Hence, according to the learned Senior Counsels appearing for the defendants, the delay of 26 years has not been explained by the plaintiff. They also contended that the plaintiff had also knowledge about the Will even during the pendency of the earlier suit proceedings between the parties and also from the relevant documents like sale deeds, etc. Hence, they prayed that the T.O.S. may be dismissed as time barred as per Article 137 of the Limitation Act, and hence, they requested for framing additional issue on the question of limitation and to decide the same as a preliminary issue, by allowing the application in A.No.4533 of 2014 in T.O.S.No.2 of 2009, filed by the second defendant during the pendency of this T.O.S.

49. With regard to the above contention of delay, learned counsel appearing for the plaintiff, in reply submitted that since the filing of the O.P. for grant of Letters of

Administration is only regarding the cause of action, which subsists as of today and though the defendants also raised the aspect of limitation in their written statements by stating that the plaintiff has not taken steps all these years, Article 137 of the Limitation Act will not apply to the facts of the present case. He also contended that since there is no specific period of limitation fixed in the Limitation Act, more particularly for filing of O.P. for grant of probate or Letters of Administration, or in any law for the time being in force, for filing of the O.P. for grant of probate or Letters of Administration, the T.O.S. may not be dismissed as time barred.

50. In this regard, it is worthwhile to quote Article 137 of the Limitation Act, which reads as follows:

Third Division--Applications

Part-2--Other Applications

Description of application	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

51. Though the learned counsel appearing on both sides relied on various decisions as extracted in the earlier part of this judgment, including the point of limitation, learned counsel appearing for the plaintiff brought to the notice of this

Court, a latest judgment rendered by the First Bench of this Court, dated 07.01.2016 in O.S.A.Nos.10 and 72 of 2013, in which the First Bench of this Court dealt with various decisions of this Court as well as the Supreme Court on the aspect of limitation and paragraph 49 of the said judgment of the First Bench reads as follows:

"49. In the light of the ratio laid down in the above decisions, it cannot be stated that Letters Patent and Rules made thereunder by the High Court for regulating the procedure on the Original Side, are subordinate legislation and, therefore, only Limitation Act which is a superior legislation will prevail. On a conspectus of the above legal scenario, we conclude that the probate Court has been conferred with exclusive jurisdiction and particularly, the conspicuous absence of any period of limitation in applying for issuance of probate/Letters of Administration makes it clear that the law of limitation will not apply to Sections 232 and 278 of the Indian Succession Act in respect of proceedings initiated before this Court as per the Original Side Rules. In such view of the matter, the finding of the learned single Judge holding that Article 137 of the Limitation Act is not applicable to the probate proceedings and dismissal of the Original Applications, in our considered opinion, require no interference."

52. In the above case before the First Bench, the O.P. proceedings for grant of Letters of Administration was filed under Sections 232 and 278 of the Indian Succession Act and therein, there was an objection by the other side that the O.P. proceedings are time barred under Article 137 of the Limitation Act and on that ground, it was contended that the T.O.S. therein may be dismissed. In the case on hand, learned Senior Counsels appearing for the defendants contended that Article 137 of the Limitation Act will apply to the present O.P. filed for grant of Letters of Administration and it equally applies even to the cases filed under the relevant Act(s) in Civil Courts, and presently, this T.O.S. being tried as a civil suit (i.e. T.O.S.No.2 of 2009), the O.P.(T.O.S) filed under the provisions of the Indian Succession Act, may be rejected as time barred, by allowing A.No.4533 of 2014 in T.O.S.No.2 of 2009 filed by the second defendant for framing additional issue on the question of limitation and to decide the said issue as a preliminary issue. The above said judgment of the First Bench of this Court is squarely applicable to the

facts of the present case and is an answer to the above arguments of the learned Senior Counsels appearing for the defendants on the point of limitation alleged as per Article 137 of the Limitation Act, which is not applicable to probate/Letters of Administration proceedings filed under the provisions of the Indian Succession Act. Therefore, the contention of the learned Senior Counsels appearing for the defendants that since the Letters of Administration proceedings in this case, had not been filed within three years from the date of knowledge of the Will, the same is time barred under Article 137 of the Limitation Act, is not sustainable. Hence, for the above stated reasons, the said application in A.No.4533 of 2014 in T.O.S.No.2 of 2009, is liable to be dismissed and accordingly, the same is dismissed.

53. Learned Senior Counsel appearing for the defendants further contended that the plaintiff has totally under-valued the properties and the properties worth more than the Court fee paid by the plaintiff in a sum of Rs.2,79,93,000/-, which is not proper as per the market value of the properties and that the total market value of the properties mentioned in the suit schedule would be Rs.34,85,27,994/- crores, at an increase of 30% in 2008 and therefore, they prayed for allowing A.No.4456 of 2014 in T.O.S.No.2 of 2009 filed by the second defendant for directing the plaintiff to pay proper Court fees according to the market value of the suit properties, which is Rs.34,85,27,994/- crores and make up the deficit of the Court fees.

54. In this case, though on the side of the defendants, such a plea of payment of improper Court fees by the plaintiff, had been raised, the defendants have not raised such a plea in the written statements filed by them or not adduced evidence or proved the real market value of the suit properties. Except the contention raised on behalf of the defendants, there is no other material to hold that the properties are under-valued as alleged on behalf of the defendants. Since the defendants have failed to prove the appropriate market value of the properties on the date of filing of the O.P. (T.O.S), this Court comes to the conclusion that the valuation made by the plaintiff in the O.P./T.O.S. is proper and the above contention raised on behalf of the defendants, has to be rejected. Accordingly, A.No.4456 of 2014 in T.O.S.No.2 of 2009 filed by the second defendant for directing the plaintiff to pay proper Court fees according to the market value of the suit properties, is

dismissed.

55. Learned Senior Counsels appearing for the defendants lastly contended that the plaintiff brought on record an agreement of assignment, and in her cross-examination and in the said agreement of assignment, she has admitted that the properties are covered by the assignment agreement with regard to items 3 and 4 of the suit properties. In the present suit, it is already held by this Court in the earlier paragraphs that as far as items 3 and 4 (items 3 and 4 in the affidavit of assets filed along with O.P), it has to be treated as if the testator-S.V.Ramakrishnan died intestate. Hence, the plaintiff is not the legatee. Therefore, the contention of the learned Senior Counsels appearing for the defendants that the recitals in the agreement of assignment tantamounts to a waiver of her rights, if any under the Will, though there are none, need not be gone into by this Court, as this Court already held in the earlier paragraphs in this T.O.S. that she is not entitled for grant of Letters of Administration with regard to the said items 3 and 4 of the suit properties. Though it is also contended on the side of the defendants that as regards items 3 and 4 of the suit properties, the question as to whether the plaintiff is entitled for grant of Letters of Administration or not, will have to be decided only in the suit, after analysing the oral and documentary evidence adduced by both sides and in view of the above discussion made even in the T.O.S., there is no necessary for rendering a separate finding on the above point in A.No.4457 of 2014 and the findings rendered above in the T.O.S. themselves are sufficient. Accordingly, A.No.4457 of 2014 is closed.

56. For all the reasons stated above and on a perusal of the oral and documentary evidence available on record and also on a perusal of the decisions extracted in the earlier paragraphs, which are relied on by both sides, this Court is of the considered view that Ex.P-1 Will, dated 15.07.1970 propounded to be the last Will of the deceased S.V.Ramakrishnan, is genuine and legally valid only with regard to items 1 and 2 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P). Issue No.(i) is answered accordingly.

57. As the Will had been proved by the plaintiff in accordance with law, it has to be held that the Will was not obtained by fraud, coercion and exerting undue influence

as pleaded by the defendants. Issue No.(ii) is answered accordingly.

58. In view of the above answers to Issue Nos.(i) and (ii), the plaintiff is entitled for grant of Letters of Administration as prayed for, only in respect of items 1 and 2 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P) and she is not entitled for grant of Letters of Administration with regard to items 3 and 4 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P). Issue Nos.(iii) and (iv) are answered accordingly.

59. For the foregoing reasons and the findings rendered above:

(i) T.O.S. is decreed as prayed for only in respect of items 1 and 2 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P).

(ii) T.O.S. is dismissed with regard to items 3 and 4 of the suit properties (as mentioned in the affidavit of assets filed along with the O.P).

(iii) For the reasons stated in the preceding paragraphs of this judgment, A.No.4456 of 2014 in T.O.S.No.2 of 2009 is dismissed, A.No.4457 of 2014 in T.O.S.No.2 of 2009 is closed, A.No.4458 of 2014 in T.O.S.No.2 of 2009 is allowed and A.No.4533 of 2014 in T.O.S.No.2 of 2009 is dismissed.

(iv) No costs.