Ramesh and ors. Vs. Laxmamma and ors.

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SooperKanoon Citation : sooperkanoon.com/433403

Court : Andhra Pradesh

Decided On : Feb-25-1999

Reported in : 1999(2)ALD483; 1999(2)ALT553

Judge : S.V. Maruthi, J.

Acts : Evidence Act, 1872 - Sections 90; Andhra Pradesh (Telangana Area) Record of Rights in Land Regulations Act, 1358

Appeal No. : WP No. 654 of 1997 and Batch

Appellant : Ramesh and ors.

Respondent : Laxmamma and ors.

Advocate for Def. : Mr. C.P. Sarathy, Adv.

Advocate for Pet/Ap. : Mr. M.R.K. Chowdary for Challa Seetharmaiah, Adv.

Judgement :

1. These three second appeals are disposed of by a common judgment arise out of a common judgment and the parties are same.

2. The subject-matter of the three suits is the land admeasuring 1 acre 3 guntas in Sy.No.143, 12 guntas in Sy.No.144, 2 acres 11 guntas in Sy.No.145, 4 guntas in Sy.No.146, 1 acre 10 guntas in Sy.No. 147, 1 acre 27 guntas in Sy.No. 155, I acre 30 guntas in Sy. No.249, 3 acres 34 guntas in Sy. No.282 and 9 guntas in Sy.

No.372 in all admeasuring 13 acres 31 guntas of Nizampet village of Qutubullapur Mandal, Ranga Reddy District.

3. The plaintiffs in OS No.136 of 1987 are the appellants in all the three second appeals. The plaintiffs filed OS No.136 of 1987 for partition and separate possession of half share of the plaint schedule properties. The suit was decreed against which As No.73 of 1994 was filed which was allowed. Aggrieved by the same, the plaintiffs filed SA No.654 of 1997. The plaintiffs in OS No. 136 of 1987 also filed OS No.58 of 1989 for injunction restraining the defendants from alienating the plaint schedule properties. The District Munsif decreed the suit against which AS No.13 of 1995 was filed. Since AS No.73 of 1994 was allowed, the Principal District Judge allowed AS No.13 of 1995 also. Aggrieved by the same the plaintiffs filed SA No.666 of 1997.

4. The defendants filed OS No. 177 of 1980 (renumbered as OS No.90 of 1981) against the plaintiffs for injunction and for rectification of entries in the revenue records for the year 1974-86 relating to the plaint schedule properties by deleting the name of Venkaiah and entering the name of Laxmamma. The said suit was initially decreed by the Munsif Magistrate, Medchal granting an injunction, but refusing to grant relief of rectification of entries in the revenue records in view of the pendency of the suit OS No.136 of 1987 and writ questioning DRO's order dated 22-2-1988. On appeal in AS No.16 of 1990, the District Munsit's judgment was reversed. In second appeal to the High Court, the High Court remanded the matter again to the Addl. District Judge's Court for disposing of the matter in the light of the observations made by the High Court. After remand, AS No.16 of 1990 was tried along with AS No.73 of 1994 and AS No.13 of 1995. Since the appeal filed by the defendants was allowed and the plaintiffs suit in OS No.136 of 1987 and OS No.58 of 1989 were dismissed, the suit OS No.90 of 1981 was decreed granting injunction and directing rectification of entries in the revenue records.

5. Before referring to the averments in the plaint, it is necessary to refer the genealogy of the plaintiffs and the defendants. The original owner of the plaint schedule properties is one Lingaiah. He had two sons and one daughter, viz., one Laxmaiah, Balaraj and Balamma. Laxmaiah married one Lachamma and they had

a daughter Laxamma who is the first defendant in OS No. 136 of 1987, OS No.58 of 1989 and plaintiff in OS No. 177 of 1980. Balraj had no issues. Balamma had two sons by name Venkaiah and Jangaiah. The 1st defendant Laxmamma, daughter of Laxmaiah, was married to Jangaiah, son of Balamma. Venkaiah brother of Jangaiah had three wives. Ramesh is the son of the said Venkaiah. Balraj died in 1960. Laxmaiah died in 1974 and Venkaiah died in 1982. Ramesh, his mother and his stepmother are the plaintiffs in OS No. 136 of 1987 and OS No.58 of 1989. Laxmamma, her father Laxmaiah and mother late Lachamma are the defendants in both the suits. The LRs. of Venkaiah were added as parties as defendants 1 to 4 in OS No. 136 of 1987. In OS No.90 of 1981 Laxmamma and her mother are the plaintiffs while Venkaiah, his brother Jangaiah, Ramesh and his mother Indramma besides defendants 3 to 6 were the defendants. The fight is between the daughter of Lingaiah 's son and son of Lingaiah's daughter:

6. The facts in brief as stated in OS No. 136 of 1987 which is a partition suit are referred hereunder as the other suits relate to the consequential reliefs :

7. Lingaiah died leaving behind him his two sons Balraj and Laxmaiah. They became owners of two equal halves of plaint schedule properties and they enjoyed independently. Balraj had no issues. Therefore, he executed a Will in 1946 bequeathing his half share in the plaint schedule properties in favour of Venkaiah i.e., father of the plaintiff in OS No. 136 of 1987 being his sister's son. Pursuant to the execution of the Will, entries in the revenue records were also made treating the said Venkaiah and Laxtnaiah, the father of the 1st defendant as the joint possessors. After the death of Venkaiah, plaintiffs and the defendants became the joint owners of the plaint schedule properties having equal shares. The 1st defendant went to the house of late Laxmaiah as his illatom son-in-law. There was no partition, but for their convenience sake, they were cultivating separate piece of lands. While so, Laxmamma, the 2nd defendant filed a suit for injunction against the father of the 1st plaintiff viz., Venkaiah and Jangaiah, her husband in respect of plaint schedule properties in OS No.90 of 1981 and obtained ex parte injunction. The said suit was decreed against which an appeal was filed. Appeal was allowed and in the second appeal, the matter was remanded. Inspite of repeated demands by the plaintiffs for partition of the plaint schedule properties, the defendants did

not heed to the request and hence the suit for partition and other reliefs. The 1 st defendant and parents of the 1st defendant remained ex parte.

8. The 2nd defendant Laxmamma filed a Written Statement denying the averments made in the plaint. She claimed that the plaint schedule properties are the absolute properties of Laxmaiah who enjoyed them exclusively during life time. Balraj was of unsound state of mind and died issueless. Therefore, he did not die possessing the plaint schedule properties. Balraj lived with Laxmaiah on account of his ill-health tilt his death. The averment that Balraj executed a Will in favour of Venkaiah, the father of the 1 st defendant is also denied as false. In addition, it is stated that the Will was forged and fabricated one and was brought into existence to knock away the properties belonging to the defendants. It is further stated that in collusion with the revenue authorities. Venkaiah manipulated the record by incorporating his name in place of Balraj. The mutation in favour of Venkaiah was denied and further stated that she has no notice of the alleged mutation proceedings. She filed an application for rectification of entries in the revenue records against the plaintiff under the provisions of A.P. (Telangana Area) Record of Rights in Land Regulations Act, 1358 Fasli before the District Revenue Officer in respect of the plaint schedule properties and he allowed the said application by his order dated 22-2-1988 and directed deletion of the name of Venkaiah from Pattedars Column of Pahani from 1955-56 onwards. The other allegations arc also denied. It is stated that the plaintiffs suit for partition is liable to be dismissed.

9. The averments in the other two suits are same and hence need not be repeated. In support of the averments, theplaintiffs filed Exs.A1 to A32 while the defendants filed Exs.B1 to B53. On behalf of the Court, Exs.X1 to X7 were marked. In support of his claim that Balraj executed the Will bequeathing the plaint schedule properties to his father, the plaintiff examined PW2 Gumasta Patwari of Nizampet from 1950-69, attestor of the Will and PW3 son of Raj Reddy who is one of the attestors of the Will and PWs.4 and 5. The defendant examined herself as DW1, DW2 and DW3.

10. On the basis of the evidence, the District Munsif decreed the suits of the plaintiffs viz,, OS No.136 of 1987 and OS No.58 of 1989. Aggrieved by the same,

the 1st defendant filed two appeals viz., AS No.73 of 1994 and AS No. 13 of 1995. The learned Judge heard these two appeals along with AS No. 16 of 1990 filed against OS No.90 of 1981 and dismissed the suit allowing the appeal. Aggrieved by the same, the plaintiff filed the present three appeals.

11. The learned Principal District Judge held that;

'Thus, these suspicious circumstances surrounding the execution of Will create a genuine doubt whether the Will was truly executed by Balraj and even if he signed, whether he signed knowing the contents with an intention to bequeath his half share in favour of Venkaiah and that he was in fit state of mind to so bequeath at the relevant time.'

12. According to the learned Judge, the suspicious circumstances are that Balraj was living with Laxmaiah and he died in his house; Will was not executed in the villager or in Laxmaiah house, but in the house $f some Jagirdar; The identity of the said Jagirdar is not clearly established; The attestors are neither relatives nor neighbours. Laxmaiah have no knowledge about execution of the Will even according to PW1; Venkaiah is the beneficiary under the alleged Will; the custody of the Will with the plaintiffs father; Will was handed over to Venkaiah, the beneficiary; The person who scribed the Will in Urdu was not identified - whether it was Jagirdar himself or Jagirdar's Munshi; PW! says that Balraj was an illiterate, but a signature is found on the Will and PW2 claimed that Balraj signed in his presence; The special circumstances under which Venkaiah was given the property was not explained; the Will was filed in 1988; PWI does not say whether Will was read over and explained to Balraj; the intention expressed in the Will did not reflect in the subsequent events; There was no evidence that Venkaiah served Balraj; No Pahanies prior to 1963-64 were filed; Revenue records were not confirmed as such.

13. In other words, the learned Judge held that the plaintiffs failed to prove that the Will was genuine on account of suspicious circumstances, the Will cannot be held to be a genuine one and therefore, the plaintiffs claiming the properti.cs under the Will arc not entitled for partition. In the appeal, the defendants had given up the contention that Balraj, the executant of the Will was of unsound mind though there

was a plea in the Written Statement and no evidence was adduced.

14. The main argument of the learned Counsel for the appellants is that the Will is of the year 1946 and, therefore, the presumption under Section 90 of the Evidence Act arises as by the time the suit was filed in 1976 30 years have elapsed. Though the said presumption is a rebuttable presumption, since the appellants have given up the contention in the appeals that Balraj, the executant of the Will was of unsound mind, there are no other suspicious circumstances in order to hold that the Will is not genuine.

15. Hereinafter, the plaintiffs in OS No.136 of 1987 are referred to as theappellants and the defendants are referred to as the respondents.

16. From the facts narrated above, it is clear that the appellants are claiming half share relying on the Will of 1946 of Balraj, while the respondents are denying the execution-of the Will on the plea that Balraj is of unsound mind and therefore, he could not have executed the Will. However, the said plea was given up at the stage of the appeal and, therefore, the said plea is no longer available to the respondents.

17. There is no finding by the District Judge that the signature on the Will was forged. On the other hand, he says relying on the evidence of DW1 who stated that Balraj is of unsound mind and so he could not have executed the Will. It is pointed that it is not the case of the 2nd defendant that since Balraj was an illiterate person, he could not have executed the Will. Further the signature of Balraj was not put to her in the cross-examination. Since it is not her case that Balraj was an illiterate and, therefore, he could not have signed the Will and since the plea of unsoundness of mind was given up coupled with the evidence of PW2 Gumasla Palwari of Nizampet that Balraj had elementary education establishes that Balraj was capable of affixing his signature on the Will. It is no doubt true that PW1 in his evidence admitted that he deposed in OS No.90 of 1981 that Balraj does not know to read and write and further explains that he stated that he knows that Balraj know to read and write a little. In my view, no credence should be given to the evidence of PW1 so far as this aspect is concerned as he was only 4 years old at the time of the death of Balraj. Therefore, he could not have spoken with

credibility whether Balraj could write or read. Coming to the execution of the Will PW2 speaks that Balraj executed the Will at the Jagirdar's house in his presence and the signature of Raj Ready the other attestor who died was identified by PW3 his son. PW2 is the only person who could speak the truth and there is no reason as to why his evidence should not be trusted as he withstood the cross-examination and his evidence inspires confidence. Therefore, since the signature of other attestor was identified by his son viz., PW3 and since PW2 says categorically that in his presence Balraj executed the Will and since it is not the case of the respondents that Balraj could not write and read and, therefore, he could not have executed the Will, it is clear that there is evidence to reach to the conclusion that Balraj was able to sign. II, therefore, follows that Balraj has signed the Will.

18. It is the appellant who is propounding the Will and claiming the properties under the Will and, therefore, the onus to prove is on the appellant. 'One important feature which distinguishes Will from other documents is that the Will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who had already departed the world cannot say whether it is his Will or not; and this aspect naturally . introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of the departed testator. Even so, in dealing with the proof of Wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free Will. Ordinarily, when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature asrequired by law, Courts would be justified in making a finding in favour of the propounder. In other words the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.' (Refer H. Venkatachala v. B.N. Thimmajamma, : AIR 1959 SC443). In other words, the propounder of the Will has to prove the due and valid execution of the Will and that if there are any suspicious circumstances surrounding the execution of the Will the

propounder must remove the said suspicious from the mind of the Court by cogent and satisfactory evidence. If the propounder of the Will is able to establish that the testator is capable of putting his signature on the document and adduce evidence that in fact he has put his signature on the Will that part of the onus that the testator has executed the Will has been discharged. I have already given a finding in view of the evidence of the attestor and the evidence of PW2 and PW3 who is the son of the 2nd attestor who identified the signature of the 2nd attestor, the propounder of the Will viz., the appellant has discharged the onus by proving the essential facts.

19. It is true that the District Judge held that in view of the suspicious circumstances surrounding the execution of the Will, the Will was not executed by Balraj. Before considering the finding of the learned District Judge on the above issues, it is necessary to point out that the Will was executed in 1946, The suit OS No. 177 of 1980 was filed by the respondents against the appellant for injunction and for rectification of the pahani patrikas relating to the plaint schedule properties. The said suit was renumbered as OS No.90 of 1981. In the said suit, the original Will was produced. In other words, the Will is more than 30 years old by the time it was produced in the suit OS No.90 of 1981 and, therefore, it falls under the category of ancient documents. The law recognises a conclusive presumption in favour of the due execution of ancient deeds and wills. When these instruments are thirty years old, and are unblemished by any alterations, and are produced from natural custody, they are said to prove themselves. Their bare production is sufficient, the subscribing witnesses being presumed to be dead. This presumption - so far as the present rule of evidence is concerned - is not affected by proof that the witnesses are living. (Refer Taylor's Evidence, 16th Edition, part 87).

'129. Ancient documents which prove themselves :-- Written documents proved or purporting to be not less than twenty years old, which are produced from proper custody, are presumed, in the absence of circumstances of suspicion, to have been duly signed, sealed, attested, delivered or published according to their purport. The period of twenty years is reckoned from the time of their signature or execution to the time of their production in Court, whether they are wills or other instruments. Such documents, in other words, are said to prove themselves.'

'131. Proper custody of ancient documents :-- Documents are said to be produced from proper custody when they have been in the keeping of some person who might reasonably and naturally be expected to have possession of them, although he need not necessarily be the most appropriate person.For documents the custody of which is imposed on a certain person, proper custody has been held to be the custody of that person; for Court rolls, the custody of the lord of the manor or of the steward; for a case for Counsel's opinion, the family papers of a descendent of the person who submitted it; .....'

(Halsbury's laws of England 170)

20. In Dhanapal v. Govindaraja, : AIR1961 Mad262 , the main controversybetween the parties centered around genuineness of the two wills which are more than 30 years old. The Madras High Court while holding that it would be dangerous for the Courts to draw the presumption of due execution mechanically on the sight of the document purporting to be 30 years old and coming from proper custody, held that, inasmuch as the presumption dispenses with proof of due execution in cases of treatment where the onus of proof is heavy on the propounders of the Will, the Court must act with extreme caution and the utmost circumspection, observed as follows:

'The language used in the section is 'may presume' and it is needless to say that the Court has got a judicial discretion to be exercised in drawing the presumption. But the Court cannot arbitrarily say that it will not draw the presumption merely because the matter is one for the exercise of its discretion. The real scope of Section 90 seems to be that in the normal circumstances, where it is found that the document. In question emanates from an apparently lawful custody and where the document is such that it is likely to have been executed having regard to the common course of human conduct, and where there are no circumstances to excite the suspicion of the Court, such as unnatural ness and artificially surrounding the transaction or an apparent interlineation or correction or tampering with the document, the Court will draw the presumption.'

21. What follows from the above is that a presumption in favour of due execution of Will including the attestation of the said Will and the disposing power of the

testator arises in the case of a document which is over 30 years old under Section 90 of the Evidence Act. However, merely because a document is of 30 years old and is produced from a proper custody, it cannot mechanically draw the presumption as the presumption dispenses with proof of due execution and the Courts have to act with extreme caution and with utmost circumspection. It is within the judicial discretion of the Courts, having regard to the facts and circumstances of the case, to draw presumption under Section 90 of the Evidence Act. It cannot arbitrarily refuses to draw presumption in case of a document of 30 years old provided that the normal circumstances exists in drawing such a presumption viz,, it is produced from the lawful custody and it is likely to have been executed having regard to the common course of human conduct and there are no suspicious circumstances surrounding the execution of the document, such as, unnaturalncss and artificiality or an apparent interlineation or correction or tampering with the document. A Will which is of 30 years old does not require to be proved by virtue of presumption under Section 90 of the Evidence Act and by virtue of its being an ancient document as such documents are said to have been proved themselves. In other words, it is not necessary for the propounder of the Will to prove due execution of the documents if it is of 30 years old as the document proves itself in the absence of suspicious circumstances.

22. On the facts of the present case, as pointed out earlier, the document is of 30 years old and, therefore, the presumption under Section 90 arises and the document proves itself.

23. Further the document was produced by the descendent of Balraj claiming the property under the Will and it is but natural that the person claiming the property under the Will should nave the custody of the Will. Therefore, the Will had been produced from the proper custody. (Also refer Kotayya v. Vardhamma, AIR 1930 Mad. 744; Ramayya v. Kotayya, AIR 1930 Mad. 748 and Munnalal v. Mst. Kashibai, 1973 Indian Appeals 233.

24. Now I will deal with the suspicious circumstances pointed out by the learned District Judge while holding that the Will was not executed by Balraj. If these surrounding circumstances conclusively prove, than even'though the propounder

of the Will has proved the execution of the document and even though the document is of 30 years old and it has proved itself, still the Will cannot be held to be valid and, therefore, it is necessary to examine the surrounding circumstances found by the learned District Judge at this stage.

25. At the outset, it is pointed that the Will was executed in 1946 and Balraj died in 1960. The father of the 1st respondent Laxmaiah died in 1974. Though the property was in the name of the father of the 1st appellant Venkaiah in the revenue records, till the death of the father of the respondent no dispute was raised either by the 1st respondent or the father of the 1st respondent Laxmaiah who was the brother of Balraj. It is only for the first time in 1980 that the respondent raised a dispute by filing the suit against the appellants for injunction and for correction of the entries in the revenue records. Neither the 1st respondent nor his father sought the correction of entries in the revenue records on the ground that Venkaiah's name was wrongly entered in the revenue records. If really the name of Venkaiah was surreptitiously incorporated in the revenue records, the 1st respondent and her father had ample time to seek correction of the same as Balraj died in 1960. From 1960 to 1981, no steps in that direction were taken either by the 1st respondent or her father. Further in the evidence of DW1, the 1st respondent in the chief examination says that her father did not take any steps to get Venkaiah's name deleted in the revenue records as the heirs of Balraj. In other words, she admits that Venkaiah's name was incorporated in the revenue records as the heir of Balraj. No doubt she explains that her father was not aware of any such mutation made in the name of Venkaiah; However, she goes back on the earlier statement and says that Venkaiah's name was not included in the revenue records as he is not the heir of Balraj. The 1st respondent also says in her evidence her mother is in possession of the entire land, that no steps are taken by her mother to correct the entries in the records; that she admits she does not know when the pattas stood in the name of her father and Balraj. In other words she admits that the name of Venkaiah was incorporated in the revenue records after the death of Balraj. The 1st respondent further says that she does not know where her husband Jangaiah was living while there is evidence to show that Jangaiah and Venkaiah were doing business in Hyderabad. She further says that one Shankar who is the son of the brother of her mother and herself are looking after

the case and previously her maternal uncle Sri Ramulu used to look after this case. Whatever may be reason for which the said incorporation was made, the fact remains that Venkaiah's name was incorporated in the revenue records and it is in the knowledge of the 1st respondent.

26. DW2 says in his evidence that one Shankar brought him to the Court and he came along with the said Shankar.

27. From the evidence of DW1 viz., respondent and DW2, it is clear that the provocation for filing the suit OS No.90 of 1981 is the maternal uncle of the 1st respondent and his son. The fact that the name of Venkaiah was incorporated in the revenue records was not disputed and no steps were taken by the father of the 1st respondent till 1981 indicates that they have acquiesced with the possession of Venkaiah being successor of the property belonging to the share of Balraj. It is only at the instance of the maternal uncle and his son of, the 1st respondent initiated thelitigation. Till 1981 she herself has not disputed the right of Venkaiah to enjoy the share of Balraj. Further, Venkaiah is no other than the sister's son of Balraj, while the 1st respondent is the brother's daughter of Balraj. The 2nd defendant viz., the husband of the, 1st respondent Jangaiah is no other than the sister's son of Balraj. In other words, Balraj's sisters' sons are Jangaiah and Venkaiah. Laxmaiah, the brother of Balraj gave her daughter-1st respondent to Jangaiah. Since-Laxmaiah's share in the joint family, properly, on his death, devolved on the '1st respondent; there is nothing improbable, impossible, unusual, unbelievable, artificial if Balraj has bequeathed his property to Venkaiah who is his sister's son, as his sister's other son Jangaiah through his wife got the share of Laxmaiah.

28. Balraj died in 1960 and from 1961 onwards Venkaiah's name was mutated in the revenue records in the place of Balraj. The names of Laxmaiah and Venkaiah continue in the revenue records till Laxmaiah died in 1974 and even thereafter (as per Exs.A5 and A7 Faisal pattis for 1961 and pahanics for the years 1962-63). If Laxmaiah, the father of the 1st respondent had any objection for inclusion of Venkaiah's name in the revenue records on the ground that he is not the heir, he would have been the 1st person to take steps to get the revenue records corrected

as he would be deprived of his right to the property and that of his daughter's right.

29. It is pointed out that any and every circumstance is not a 'suspicious' circumstance. A circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. (Refer Indu Bala Bose v. Manindra Chandra Bose, (1982) SCC 20.

30. Further there is neither improbability of bequeathing the property to Venkaiah by Balraj nor it is impossible for the reasons already mentioned earlier.

31. It is also pointed that when a Court is dealing with a testamentary case where there is a large and consistent body of testimony evidencing the signing and attestation of the Will, but where it is suggested that there are circumstances which raise a suspicion and make it impossible that the Will could have been executed, the correct line of approach is to see that the improbability in order to prevail against such evidence must be clear and cogent and must approach very nearly to, if it does not altogether constitute an impossibility. (Refer Chotey Narain Singh v. Ratan Koer, ILL 22 Cal. 519 (PC) and Kristo Gopal Nath v. Baidya Nath Khan, AIR 1939 Cal. 87.

32. The fact that Balraj was living with Laxmaiah and Will was not executed in the village where Balraj was living, but in the house of Jagirdar, is not a suspicious circumstance as the State of Hyderabad was passing through turmoil in 1946 and in those days a Jagirdar was considered to be a reliable and sovereign personality. Perhaps that may be the reason why the Will was executed at Jagirdar's house. Learned Judge is not right in saying that Jagirdar's identity was not established. PW1 in his evidence says that since D1 was married to D2. Balraj made a Will to bequeath his property in the name of his father as the share of Laxmaiah will go to the share of D2 subsequently and the original of Ex.A1 was executed in the presence of the Jagirdar Mohd. Hashim Hussain PW2 in his evidence stated that the lands in Nizampet village belonged to Jagirdar Mohd. Hashim Hussain. Therefore, even if the evidence of PW1 is excluded. PW2 who is a disinterested witness had identified the Jagirdar. The learned Judge is not right in holding that the Jagirdar in whose residence the Will was executed is not identified.

33. The next suspicious circumstance according to the learned Judge is that the attestors are not relatives or neighbours. It is now well established that the attestors need not necessarily be relatives or neighbours. The very fact that PW2 is the patwari of Nizampet and the other attestor viz., Raj Reddy is a Patel indicates that they have taken care to see that some responsible persons atleast the Will as Patwaris and Patils are the revenue officials of the village.

34. The next suspicious circumstance according to the learned Judge is that Laxmaiah had no knowledge of the Will even as per PW1 it is true that there is evidence that Laxmaiah was not aware of the instance of the execution of the Will. However, the very fact that he kept quiet and did not take steps to correct the entries made in the revenue records entering the name of Venkaiah indicates that the property was given to Venkaiah. This circumstances, in my view, cannot be treated (o be a suspicious circumstance against the execution of the Will.

35. It is true that Venkaiah is the beneficiary who called the attestors and the custody of the Will was with him. However, as pointed out in the earlier paragraphs, the descendent of the person is a proper person with whom the custody of the Will should be. Therefore, there is nothing unusual in Venkaiah having the custody of the Will. Similarly, the fact that Venkaiah who is the beneficiary called the attestors cannot be stated to be a suspicious circumstance. As pointed out earlier, Laxmaiah's share was given to Jangaiah the husband of the 1st respondent one of the sons of Laxmaiah's sister, as the 1 st respondent is the heir of Laxmaiah while the share of Balraj goes to the other son of Balraj''s sister. In the result, the two sons of the sister inherited the properties of the brothers. Therefore, there is nothing improbable or unusual or artificial if Venkaiah is (he beneficiary and if he has called the attestors.

36. As regards the signature of Balraj on the Will, I have already dealt with in the earlier paragraph.

37. As regards the special circumstance which warranted execution of Will bequeathing the property in favour of Venkaiah, as stated in the above paragraphs, Lakshmaiah's share had gone to Jangaiah. one of the sons of Balamma (sister of Lakshmaiah) through his wife (daughter of Lakshmaiah) and

therefore, the share of Balraj had gone to Venkaiah (another son of Balamma. This itself is a special circumstance.

38. The learned Judge is not right in holding that the Will was filed in 1988. In fact it was filed as Ex.B2 in OS No,90 of 1981.

39. It is true PW2 does not say that the Will was read over and explained to Balraj. It is also true that the scribe was not identified. However, the learned Judge is not correct in saying that the intention was not reflected in the subsequent events. The very fact that the entries in the revenue records were mutated immediately after the death of Balraj and the fact that in the land acquisition proceedings, the respondents and Venkaiah claimed share in the compensation equally indicate that the intention is reflected in the subsequent events. One of the witnesses says that Venkaiah performed the obsequies of Balraj. There cannot be any dispute that revenue records will not confer any title and the fact that Pahanies prior to 1962-63 were not filed is not a suspicious circumstances as the cumulative effect of all the circumstances have to be taken into account and on overall picture of the facts and circumstances have to be taken into account before holding whether the execution of the Will is surrounded by suspicious circumstances or not.

40. In view of the above, I am of the view that the so-called suspicious circumstances are not suspicious circumstances and the learned Judge is not correct in law in holding that the Will was not executed by Balraj.

41. In View of the substantial questions of law that arose for consideration, the second appeals are allowed with costs through out.