

Sarasamma Vs. Vikraman

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Court : Kerala

Decided On : Jun-07-1995

Reported in : II(1995)DMC447

Judge : K.G. Balakrishnan and; K. Narayana Kurup, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; Matrimonial Law

Appeal No. : A.S. Nos. 48 and 396 of 1985

Appellant : Sarasamma

Respondent : Vikraman

Advocate for Def. : S. Balachandran,; James Vincent,; P. Kesavan Nair,;

Advocate for Pet/Ap. : K. Sudhakaran, Sr. Adv. and; B. Reghunathan, Adv.

Disposition : Appeal allowed

Judgement :

K.G. Balakrishnan, J.

1. These two appeals were referred to the Division Bench by reference order dated 15.2.1994.

2. A.S. 396 of 1985 arises out of the judgment in O.S. 554 of 1981 on the file of Sub Court, Trivandrum and A.S. 48 of 1985 is against the judgment in O.S. 1 / 82 in a probate proceeding on the file of District Court, Trivandrum. We shall first deal with the facts involved in A.S. 396/85. The suit O.S. No. 554/81 was filed by one Lakshmy Gomathy and her two children. There are two sets of defendants. Defendants 1 to 6 are Kunji Sarasamma and her children, Defendants 7 to 10 are one J. Madhavi and her children. In the appeal there is a triangular contest between the first defendant and the 7th defendant as to who is the real wife of one Rama Krishna Panicker, who was a driver in the K.S.R..T.C.

3. Plaintiff-Lakshmy Gomathy and her children filed the suit alleging that they are the true legal heirs of deceased Ramakrishna Panicker. The main allegations in the plaint were to the following effect. Ramakrishna Panicker married the first plaintiff on 14.4.1126 observing all the Hindu rites prevalent among Hindu Ezhava community and the marriage was registered in the local S.N.D.P. Branch Officer at Aralummoodu. Plaintiffs 2 and 3 were born in that wedlock. Ramakrishna Panicker had no other legally wedded wife. While Ramakrishna Panicker was alive defendants 7 to 10 filed M.C. 2/69 against him before the District Magistrate, Trivandrum and obtained any order for maintenance in their favour. In that proceeding, Madhavi the 7th defendant claimed to be the wife of Ramakrishna Panicker. The order passed in that maintenance case is not binding on the plaintiffs. Defendants 7 to 10 filed O.S. 656/ 73 for realisation of arrears of maintenance granted in M.C. 2/69, Ramakrishna Panicker filed O.S. 891/73 before the Munsiff's Court, Trivandrum against defendants 7 to 9 for setting aside the order passed in M.C. 2/69, O.S. 653/73 and 891/73 were tried jointly and the suit filed by the defendants 7 to 10 was decreed and suit filed by Ramakrishna Panicker ended in dismissal. Ramakrishna Panicker filed Appeal A.S. 65/77 against the decree in O.S. 653/73 but no appeal was filed against the decree and judgment in O.S. 891/73. During the pendency of A.S. 65/77 Ramakrishna Panicker on 21.7.1978. The plaintiffs herein filed I.A. 999/79 to get themselves impleaded in that suit as legal heirs of Ramakrishna Panicker to prosecute the appeal A.S. 65/77. The first defendant Kunhi Sarasamma and her children filed similar I.A. for getting themselves impleaded in the appeal as legal representatives of Ramakrishna Panicker. The District Court remitted the matter to the Munsiff's

Court for determining as to who were the legal representatives of deceased Ramakrishna Panicker. The plaintiffs herein filed C.R.P. 2349/80 before this Court. That D.R.P. was dismissed. The appeal A.S. 65/77 was dismissed as there was no appeal against the judgment and decree in O.S. 891/73

4. On the above set of facts the plaintiffs in the suit contended that the decree and judgment in O.S. 656/73 was confirmed in A.S. 65/77 and the decree and judgment in O.S.891/73 were not binding on the plaintiff. Plaintiffs also disputed the Will executed by deceased Ramakrishna Panicker, in respect of Rs. 13,689.80, the amount which was due to Ramakrishna Panicker by way of arrears of gratuity and salary. Plaintiffs prayed that they are entitled to her the properties held by Ramakrishna Panicker. Plaintiffs prayed that the decree holder in O.S. 656/73 shall not execute the decree against the state of deceased Ramakrishna Panicker.

5. Defendants 1 to 6 namely Kunji Sarasamma and her children allege that they are the legal heirs of Ramakrishna Panicker. They allege the Ramakrishna Panicker married the first defendant on 25.1.1130 ME and the marriage was conducted at the family temple of the first defendant in accordance with the religious customs and ceremonies prevalent in their community. The marriage between Ramakrishna Panicker and the first plaintiff was denied. Defendants 1 to 6 filed O.P. (Probate) 140/80 before the District Court, Trivandrum in respect of a Will executed by Ramakrishna Panicker. That was the last Will executed by deceased Ramakrishna Panicker. Ramakrishna Panicker and the first defendant jointly executed that Will and by that Will all the properties are bequeathed to defendants 2 to 6. Defendants 1 to 5 alone have got right to receive the amount which was due to Ramakrishna Panicker.

6. Defendants 7 to 9 filed written statement alleging that the suit was not maintainable. It was contended that the plaintiffs were not the legal heirs of deceased Ramakrishna Panicker. He had not married the first plaintiff at any time. Ramakrishna Panicker was having concubines at different places and the first plaintiff was one among them. The 7th defendant was the legally wedded wife of Ramakrishna Panicker. They were living as husband and wife. For some period he

was not in good terms with 7th defendant and her children. He had not married the first defendant. The 7th defendant filed M.C. 2/69 for getting maintenance. Ramakrishna Panicker had contended that 7th defendant was not his wife. Ramakrishna Panicker was bound by the order passed in the maintenance case. He had filed O.S. 891/73 for setting aside the order in M.C. 2/69. The 7th defendant has filed O.S. 656/73 which was decreed and O.S. 891/73 was dismissed. The suit is barred by res judicata in the right of the decision in O.S. 656/73 and O.S. 891 / 73. Plaintiffs are bound by these decisions. They also allege that first defendant has no right to receive any amount from K.S.R.T.C.

7. In the above pleadings seven issues were framed. Issue No. 3 relates to a question as to who is the legally wedded wife of deceased Ramakrishna Panicker and Issue No. 6 relates to the question as to whether the plaintiffs were entitled to get the declarations prayed for. The Trial Court held that the plaintiff-Lakshmy Gomathy was the legally wedded wife of Ramakrishna Panicker. The Trial Court also held that decree passed in O.S. 656/73 and O.S. 891/73 and A.S. 65/77 were not binding on the plaintiffs and the estate or assets of Ramakrishna Panicker. But the prayer for declaration was allowed and it was held that these decrees were not binding on the plaintiffs. Strangely enough, the Court below further held that plaintiffs are not entitled to a declaration that the decree holder in the above suit are not entitled to execute the decree against the estates, assets and debts of Ramakrishna Panicker. The maintenance decree holder was allowed to realise the arrears of maintenance against the estate and assets left by Ramakrishna Panicker. The Court below held that the first plaintiff was the legally wedded wife and plaintiffs 2 and 3 were the legitimate children of deceased Ramakrishna Panicker. It was also held that plaintiffs were entitled to get the amount of Rs. 13,689.80 which was due to Ramakrishna Panicker from K.S.R.C.T. Plaintiff were also held to be entitled to recover plaint A schedule items from defendants 1 to 6 and additional 11th defendant with mesne profits at the rate of Rs.500/- p.a. from the date of the suit till the recovery of possession or for a period of three years whichever event occurs first. Plaintiffs were also held to be entitled to Rs. 6,000/- from the first defendant. This decree and judgment are challenged in A.S. 396/85.

8. O.S. 1/82 was filed by Kunji Sarasamma the first defendant in O.S. 554/81. That was originally filed as O.P. 140/80 for probate and letters of administration. The O.P. was later converted as O.S. 1/82. The plaintiff Kunji Sarasamma allege that she was the widow of late Ramakrishna Panicker who died on 21.7.1978. The plaintiff allege that Ramakrishna Panicker and the plaintiff together executed a registered Will in favour of their children. The children were arrayed as counter petitioners 1 to 5 in the suit. Under the terms of the Will, the immovable properties of the plaintiff and Ramo Krishna Panicker were bequeathed in favour of defendants 1 to 5 and the amount due to Ramakrishna Panicker from Government and other departments were to be received by Ramakrishna Panicker, if alive and if he is dead, to be received by the plaintiff Kunji Sarasamma. The plaintiff was also nominated as the person to receive the Provident Fund amount from the department. The Will No. 9/77 was the last one executed by Ramakrishna Panicker. A sum of Rs. 13,869.80 was due to Ramakrishna Panicker from K.S.R.T.C. Plaintiff was entitled to receive the same. Counter Petitioners 6 to 9 were impleaded as they had obtained decree against Ramakrishna Panicker claiming as his wife and child ren.

9. The defendants 1 to 5 did not file any written statement. Defendants 6 to 8 filed written statement alleging that the suit was not maintainable. It was contended by them that plaintiff was not the widow of late Ramakrishna Panicker. The execution of the Will was denied. Will produced by the plaintiff was fraudulent and the signature therein was fabricated. The properties both movable and immovable left by the Ramakrishna Panicker devolved on these defendants. Even if the plaintiff was shown as the nominee that would give her right to receive the amount. The marriage between the 6th defendant and Ramakrishna Panicker was conducted as per the customs of the community. Even though deceased Ramakrishna Panicker contended that 6th defendant was not his wife, the Court ultimately found that she was the legally wedded wife and decree for maintenance was passed. While A.S. 65/77 was pending Ramakrishna Panicker died and question arose as to who were the legal heirs of deceased Ramakrishna Panicker. Plaintiffs and defendants contested in the proceeding and after enquiry 6th defendant and her children were found to be the legal representatives of Ramakrishna Panicker.

10. Defendants 10 to 12 did not file any written statement. Evidence was adduced by the plaintiff to prove the genuineness of the Will. Exts. A1 to A4 were marked and Exts. B1 to B4 were marked from defendants side. The learned District Judge held the Ext. A1 Will was not valid and that the plaintiffs were not entitled to get any probate or letters of administration on the basis of Ext. A1. The finding of the learned District Judge is challenged in A.S. 48/85.

11. The appellants' Counsel in these two appeals Senior Counsel Mr. K. Sudhakaran contended that the judgment and decree in O.S. 1/82 and O.S. 554/81 are liable to be set aside, for various reasons. The Counsel for the respondent supported the finding of the lower Court. We should first consider A.S. 396/85 filed against the judgment in O.S. 554/81. On the basis of the pleadings and arguments advanced by the Counsels for the appellants and respondents we feel that the disputes between the parties in this appeal narrow down to a short question as to whether the earlier orders and judgments passed in previous litigations wherein deceased Ramakrishna Panicker was a party would bind the plaintiffs in the suit.

12. In A.S. 48/85 the question that arise for consideration is whether the Will allegedly executed by deceased Ramakrishna Panicker is true and genuine and Whether the appellant herein is entitled to get the probate and letters of administration as prayed for by her. The following points arise for consideration:

(i) Whether the order in M.C. 2/69 and judgment in O.S. 656/73, O.S. 891/73 and A.S. 65/77 will operate as res judicata against the plaintiffs in O.S. 554/81 in setting up the claim that they are the legal heirs of deceased Ramakrishna Panicker.

(ii) Whether the plaintiffs in O.S. 554/81 are entitled to inherit the properties of deceased Ramakrishna Panicker ?

(iii) Whether the Will executed by deceased Ramakrishna Panicker is a true and genuine document If so, whether the appellant in A.S. 48 / 85 is entitled to get probate and letters of administration ?

Point Nos. (i) and (ii):

13. For the purpose of convenience we refer the parties as plaintiffs and defendants as they have been arrayed as parties in the Court below. The plaintiffs Lakshmy Gomathy and her two children allege that they are the legal heirs of deceased Ramakrishna Panicker. The first plaintiff Lakshmy Gomathy contended that she was the legally wedded wife of Ramakrishna Panicker and her marriage with Ramakrishna Panicker took place on 14.4.1126. She alleges that the marriage took place in the local SNDP Branch Office at Aralummoodu. A register was produced by the Secretary of SNDP Saka and it is marked as A1. In the original suit the first defendant Kunji Sarssamma alleged that she was the legally wedded wife and defendants 2 to 6 are her children born in that wedlock. The 7th defendant Janaki Madhavi claims to be the legally wedded wife of Ramakrishna Panicker. She too contended that defendants 8, 9 and 10 are the children born to her through Ramakrishna Panicker. The Court below after elaborate consideration held that the plaintiff Lakshmy Gomathy is the legally wedded wife of Ramakrishna Panicker.

14. Prior to the present litigation there were series of other proceedings. The 7th defendant Janaki Madhavi and her children filed M.C. 2/69 before the District Magistrate Court, Trivandrum seeking maintenance from Ramakrishna Panicker alleging that he had married the 7th defendant on 19.12.1115. M.C. 2/69 was allowed in favour of the petitioners therein. Later defendants 7 to 10 filed O.S. 656/73 for realisation of the arrears of maintenance. Ramakrishna Panicker resisted the suit and he filed another suit for a declaration that order passed in M.C. 2/69 is not binding on him and the 7th defendant was not his legally wedded wife. O.S. 656/73 filed by Janaki Madhavi and others was decreed and the suit filed by Ramakrishna Panicker ended in dismissal. Ramakrishna Panicker did not file any appeal against the dismissal of his suit O.S. 891/73 but he filed appeal against the judgment and decree in O.S. 656/73 as A.S. 65/77. This appeal was dismissed evidently for the reason that the decree and judgment in O.S. 891/73 operated res judicata. From the above proceedings it is clear that as far as Ramakrishna Panicker was concerned his legal status as the husband of Janaki Madhavi had become final and conclusive by these proceedings.

15. The present plaintiffs Lakshmy Gomathy and others are trying to reopen the finding and contend for the position that Ramakrishna Panicker had married her on 14.4.1126 in accordance with the custom and practice prevalent in their community. The plaintiff allege that they were not parties to these proceedings and therefore these orders and judgments are not binding on them and it will never operate as res judicata. The Court below accepted this plea, in our opinion erroneously, for two reasons. The Court below held that the earlier findings in O.S. 656/73 and 891/73 were rendered by Munsiff Court and hence these Courts were having limited jurisdiction and the question now raised in these proceedings cannot be considered by the Munsiff Court, and therefore, the principle of res judicata have no application. In support of this view, the Court relied on two decisions reported in Neelakantan v. Kesavan (1956 KLT 262) and Pandurang Mahadeo Kavade v. A.B. Bokil [1971 (3) SCC 530]. In Neelakantan v. Kesavan (1956 KLT 262), it was held that, the Court which tried and decided the earlier suit must have been a Court competent to try the subsequent suit and that Section 11 of the C.P.C. will not apply when a prior suit is disposed of by a Munsiff Court and the subsequent suit is beyond the competency of jurisdiction of the Court. In Pandurang Mahadeo Kavade v. A.B. Bokil [1971 (3) SCC 530] the Supreme Court held that there will not be any question of res judicata if the previous decision was by a Court having no jurisdiction to try the second suit. But the effect of these two decisions and similarly decisions were taken away by the subsequent amendment of the Code of Civil Procedure. Section 11 of the Code of Civil Procedure was drastically amended by C.P.C. (Amendment) Act, 1976 and Explanation (VIII) as added to Section 11, Explanation VIII of Section 11 of the C.P.C. reads as follows:

'An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised'.

The above additional Explanation (VIII) to Section 11 makes it abundantly clear that even if the earlier decision was by a Court of limited jurisdiction, the same will operate as res judicata in a subsequent suit in which the same issue has been

raised. This question was considered in various decision of the Supreme Court. (See Devaki Amma and Ors, v. Kunhiraman Nair (1980 KLT 690). This decision was recently approved by the Supreme Court in Sulchana Amma v. Narayanan Nair [1993 (2) SCC 938] wherein it was held :

'Therefore, Section 11 is to be read in combination and harmony with Expl. VIII. The result that would flow is that an order or issue which had arisen directly and substantially between the parties or their privies and decided finally by a Competent Court or Tribunal though of limited jurisdiction, which includes pecuniary jurisdiction will operate as res judicata in subsequent suit or proceedings notwithstanding the fact that such Court of limited or substantial jurisdiction was not competent to try the subsequent suit'.

16. From the above decision it is clear that even if the first decision was that of a Court of limited jurisdiction and so not competent to try the subsequent suit the decision of that Court of limited jurisdiction will operate as res judicata provided the other conditions mentioned Section 11 are satisfied. Therefore, the reasons set out by the Court below to hold that the principles of res judicata will not apply is erroneous and unsustainable.

17. The next question that may arise for consideration is whether the finding in the previous proceedings could be said to be not binding on the plaintiff for the reason that they were not parties to those proceedings. It is true that the first plaintiff Lakshmy Gomathi and her children were not parties in M.C. 2/69 or O.S. 656/73 or O.S. 891/73 or A.S. 65/77. While A.S. 65/77 was pending before the District Court, Ramakrishna Panicker died. The plaintiffs 1 to 3, Lakshmy Gomathy and her children filed I.A. 999/79 to get themselves impleaded in the suit. Defendants 1 to 6 named Kunhi Sarasamma and her children also tried to get themselves impleaded in the suit. The applications filed by the plaintiffs Lakshmy Gomathy and others were dismissed and these plaintiffs filed C.R.P. 2349/80 before the High Court against that order. That C.R.P. was dismissed. The Court below held that the plaintiffs Lakshmy Gomathy and other were not parties to M.C. proceedings and original suits and therefore, the said orders and judgment will not bind them. But it may be noticed that these plaintiffs claim that they are the legal

heirs of Ramakrishna Panicker. Ramakrishna Panicker had contested the M.C. proceedings and the suit filed by the 7th defendant Janaki Madhavi and her children. In those proceedings Ramakrishna Panicker contended that he was not the husband of Janki Madhavi. But the Court held that Janki Madhavi was the legally wedded wife of Ramakrishna Panicker. It cannot be said that it was a collusive suit between Ramakrishna Panicker and Janaki Madhavi. As regards the marital status of Ramakrishna Panicker the findings in the previous litigation is final and conclusive and, in our opinion, it will operate as res judicata against plaintiffs Lakshmy Gomathy and others.

18. Exhibit A-12 is the judgment in O.S. 891 of 1973 which was a suit filed by deceased Ramakrishna Panicker for a declaration that the order passed by the District Magistrate in M.C. 2/69 is against law and facts and for consequential reliefs and he was to liable to maintain Janaki Madhavi and her children. The first defendant Janaki Madhavi has filed another suit as O.S. 656/73 claiming maintenance from Ramakrishna Panicker. There two suits were jointly tried and Ext. A12 is the common judgment. One of the issues raised in O.S. 891 of 1973 was to the following effect:

'Whether there is a valid marriage between the plaintiff and the first defendant and whether defendants 2 to 4 are the children born on that wedlock ?'

The above issue was answered against the plaintiff Ramakrishna Panicker and the Court held in paragraph 12 of Ext. A12 the effect that, 'I have no hesitation to hold that the defendant has succeeded in showing that there was a valid marriage between the plaintiff and the first defendant as alleged.' This finding in our view could be treated as a judicial decision in rem. It has been observed by the famous Authors George Spencer Bower and Turner in their book 'Doctrine on res Judicata', Second Edition, at page 215, which reads as follows:

'Sentences, decrees and judgments in matrimonial causes and matters, pronounced in this country by a Tribunal of competent jurisdiction, as to the existence and validity, or as to the nullity or dissolution, or a marriage, are decisions which determines the domestic status of the spouses, or alleged spouses, and are, therefore, conclusive in rem. This is so, even if the judgment or

decree does not contain the specific determination of matrimonial status, if the determination or a matrimonial status was necessarily the basis upon which the decree proceeded.'

According to the learned Authors:

'The judicial decision in rem is one which declares, defines, or otherwise determines the status of a person, or of a thing, that is to say, the jural relation of the person, or thing, to the world generally, and therefore is conclusive for, or against, everybody.'

So, the decision in O.S. 891 of 1973 on the file of Munsiff's Court, Trivandrum will operate as a decision in rem and, therefore, it operate as res judicata and as regards the marital status the finding of that Court is of conclusive in nature.

19. For all the above reasons, the plaintiffs in O.S. 554 of 1981 are not entitled to seek a declaration as prayed for in the suit as the first plaintiff is not the legally wedded wife of late Ramakrishna Panicker and other plaintiffs being not the legal heirs of deceased, they are not entitled to any of the reliefs prayed for into suit. We allow A.S. 396 of 1985 and hold that the plaintiffs in O.S. 554 of 1981 are not entitled to inherit the properties of deceased Ramakrishna Panicker. O.S. 554 of 1981 will stand dismissed.

20. Point No. 3: As already noticed, A.S. 48 of 1985 is an appeal filed against the judgment in O.S. 1/82 on the file of the District Court, Trivendrum. The plaintiff Kunji Sarasamma contended that herself and Ramkrishna Panicker jointly executed a Will on 16.7.1977 in favour of defendants 1 to 5 in that suit. Plaintiffs in S.S. 1/82 contended that defendants 1 to 5 were the children born to Ramakrishna Panicker through her. The Court below found that the execution of the Will was not properly proved. One of reasons given by the Court below for holding so is that there is some discrepancy in the signature of Ramkrishna Panicker. The Court compared the signature of Ramakrishna Panicker found in the Will with the signature in another document produced by the contesting defendants. We had carefully gone through the entire evidence adduced in this case. The finding of the Court below appears to be erroneous on this aspect.

21. Ramakrishna Panicker was a driver in the K.S.R.T.C. The Will was executed on 16.7.1977 and he died on 21.7.1978. Several properties are dealt within in Ext. A1 Will. Ramakrishna Panicker and Kunji Sarasamma owned several items of property and Ramakrishna Panicker had executed several documents during his life time and some of these documents were produced in Court as exhibits. But the Court did not compare any of these signatures of Ramakrishna Panicker with the signature found in the Will. Strangely enough the Court used Ext. B4 for comparison of signature. The genuineness of Ext. B4 is not satisfactorily proved. Moreover, Ramakrishna Panicker was a K.S.R.T.C. employee and there could have been official records which contained his signature. The contesting defendants did not care to summon any of these records. Therefore, the comparison of defendants did not care to summon any of these records. Therefore, the comparison of signatures was not done properly and we do not think that the contesting defendants succeeded in proving that the Will did not contain the signature of Ramakrishna Panicker.

22. It may be noticed that P.W. 1 to 4 were examined to prove the genuineness of Ext. A1. PW.4 was a witness to Ext. A1. His evidence was suspected by the Court below. He deposed that he was not present at the time of preparation of the draft and he stated that he did not go to the office at the time of the preparation of the draft. PW. 2 is the scribe who prepared the draft and PW 3 deposed that on the date of preparation of the draft Ramakrishna Panicker and Kunji Sarasamma and the other witnesses were present. This was taken as a ground to reject the evidence of PW. 4 This is only a minor discrepancy. It may be noticed that the witnesses were examined after a period of about six years. It has been held in *Maharaja Prakash Singh v. Thikka Yogendra Singh* (1989 Suppl. 1SCC 16) that:

'The evidence having recorded about 18 years after execution of the Will minor discrepancies in the evidence are natural and the Court shall not view such mistakes seriously.'

23. In the instant case, one of the attesting witnesses was examined to prove the genuineness of the Will. The scribe and other witnesses were also examined in the suit. The plaintiff also deposed about the execution of the Will. There was no

suspicious circumstances surrounding the execution of the Will. The contesting defendants could not prove that there was any suspicious circumstances in the execution of the Will. Deceased Ramakrishna Panicker was in sound disposing state of mind at the time of execution of the Will. Even after the execution of the Will he continued as a K.S.R.T.C. Driver. The finding of the Court below that execution of the Will was not properly proved is only to be rejected and we hold that Ex. A1 Will is a true and genuine document.

24. Another finding entered by the Trial Court is that in Ext. A1 Will deceased Ramakrishna Panicker had bequeathed the amount that he might have received from his employer and the Court held that this amount cannot be disposed of by testamentary disposition and on that account the suit was not maintainable. If Ramakrishna Panicker has got legal heirs, they would be entitled to his estate in the event of his death. Generally the question as to title to the property need not be considered in probate proceedings. The contesting parties can enforce their right by initiating appropriate steps. The Court below thus wrongly held that for the above reason the suit should be dismissed. Dismissal of the suit by the Court below was erroneous. We hold that the execution of Ext. A1 Will was satisfactorily proved and the Court below is directed to take further steps in the matter of grant of probate/Letters of Administration.

In the result, A.S. Nos. 48 of 1985 and 396 of 1985 are allowed and the appellants in these two appeals are entitled to costs.