

R. Vasanthi Vs. Janaki Devi and Others

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Court : Chennai

Decided On : Apr-28-1999

Reported in : 1999(3)CTC378

Judge : S. Thangaraj, J.

Acts : [Succession Act, 1925](#) -- Sections 63, 69 and 74; [Evidence Act, 1872](#) -- Sections 47, 59, 67, 68 and 69; India [Succession Act, 1925](#) -- Sections 59 and 63

Appeal No. : T.O.S. No. 10 of 1991 (O.P. No. 331 of 1990)

Appellant : R. Vasanthi

Respondent : Janaki Devi and Others

Advocate for Def. : Mr. G. Rajagopalan, ;Mr. A. Tamilarasan

Advocate for Pet/Ap. : Mr. P. Peppin Fernando, Adv.

Judgement :

ORDER

1. The petitioner has filed this petition for grant of letters of administration in respect of the Will dated 4.7.1974 executed by one Lakshmi Bai.

2. The main averments found in the petition/plaint are as follows:

The testatrix Lakshmi Bai was residing at C4, R.K. Puram, Mambalam, Madras. On 4.7.1994, while she was in a sound and disposing state of mind had executed the last Will and testament duly attested by one D. Kanmani and A.T. Venkatesan. The Will was registered before the Sub-Registrar, T.Nagar and those two witnesses signed as identifying witnesses before the Sub-Registrar. Those two attestors are now dead. The testatrix Lakshmi Bai died on 22.6.1981. The petitioner is the step sister of Lakshmi Bai and out of love and affection for the petitioner the testatrix had executed the said Will bequeathing the properties in favour of the petitioner. Earlier, Lakshmi Bai during her life-time executed a Will on 19.10.1955 in favour of one Vasudevan and the same was cancelled on 6.1.1970. Even earlier to that, she executed a Will in favour of one Kannam Lal Prasad on 26.3.1941 which was cancelled on 19.10.1965. The first respondent is the daughter of the said Kannam Lal Prasad. In respect of the said property, the petitioner has filed in O.S.NO. 886 of 1983 on the file of the District Munsif, Villupuram against one Kannan who was a tenant for recovery of Rs. 1125. In the said suit, the Will was produced as Ex.A.1 and the suit was dismissed since the Will was not probated. The Court held that the will was validly executed, but it could not be acted upon as it was not probated. The first respondent has filed in O.S.No. 1420 of 1986 on the file of the sub Court Villupuram. The petitioner had filed a written statement basing on her title and rights on the basis of the Will. The respondent Nos.2 to 6 have filed in O.S.No. 58 of 1980 on the file of the sub-Court, Villupuram. The petitioner was given the right of amendment over the properties covered under the Will and also the properties covered in the Annexure to this petition. As per the Will, the petitioner has to continue the Tharmam or Charities as stated in the Will. Hence the petition/suit.

3. The main averments found in the written statement filed by the 1st defendant are as follows:

The Will dated 4.7.1974 does not bear the signature of Lakshmi Bai and what is found there in is a forged one. In the first Will dated 26.3.1941 Lakshmi Bai has signed in Tamil and in the 2nd Will dated 19.10.1955 she has signed in English and in the Will in question she has signed in English. Lakshmi Bai was the only daughter of Rajaram Prasad and so the petitioner cannot be the sister of Lakshmi

Bai. The petitioner's mother is a Naidu lady who was not married at all. The petitioner is married to a Christian and according to Trust deed she cannot be one of the persons who can manage the Trust. One of the attestors of the Will dated 4.7.1974 is said to be the brother of the petitioner Vasanthi and the other is a total stranger to the family. There was no necessity for Lakshmi Bai to go to Madras and execute the Will for the properties situated within Villupuram District. The execution, attestation and registration of the document are all surrounded by suspicious circumstances. The 1st Respondent has filed a Suit in O.S.No. 142 of 1986 on the file of the Sub-Court, Villupuram to frame a scheme in respect of Kema Bai trust and the petitioner is 19th defendant in the said suit. Though she appeared in the said suit, written statement was not filed and she was set ex parte on 2.10.1987. In O.S.No. 886 of 1983 on the file of the District Munsif, Villupuram none of the defendants herein were made as parties and the said suit filed against the tenant for recovery of Rs. 1,125 was dismissed. Rajaram Prasad father of Lakshmi Bai executed the Will on 21.6.1939 and died on 20.8.1939. The petitioner who was aged about 47 years in 1990, could not have been the daughter of Rajaram Prasad. In the previous two Wills, there is no reference of Vasanthi the petitioner herein. In the Will executed by Rajaram Prasad on 21.6.1939 he has given life estate to Lakshmi Bai and after her life time absolute right to her heirs and the said line of succession cannot be disturbed by execution of the present Will in favour of the petitioner.

4. The main averments found in the written statement filed by the respondents 2 to 6 are as follows:

It is true that Lakshmi Bai died on 22.6.1981 but she was not residing at C4, R.K. Puram, Mambalam, Madras and the petitioner has stated so in order to grab the property of late Kema Bai. In 19th Century a choultry was constructed by one Kema Bai at the cost of Rs. 7,000 from and out of her own funds and the same was named after her, which is situated at No.35, North Street, Villupuram. The then Government voluntarily came forward to give a grant for necessary upkeep of the said Choultry. The grant of 12 cawnis of wet land and 18 cawnis dry lands are at Villupuram and Nannadu and known as Choultry manyam. Besides these, there is another 5 cawnis in the village of Kepur. The original founder had two

brothers Bavasingh and Lalsan (r) Lalsingh and she bequeathed her entire properties alongwith the choultry to her brothers and Bavasingh with the right and power of management of herproperties and choultry administration. After her death he became the sole Manager and holder of the said Choultry and its manyam lands. Bavasingh died issueless. Bavasingh's brother Lalsan @ Lalsingh had five sons, viz.

(1) Thularam,

(2) Subbaram,

(3) Thotharam,

(4) Dhanurram @ Teekaram, and

(5) Tikkaram. Tikkaram and Thularam had no issues. Bavasingh, who had no issue adopted his brother's first son Thularam and left the entire administration of Kema Bai choultry and its estate to him absolutely. Thularam adopted his younger brother's (Subbaram's) son Balajiram as his son under a registered Will dated 12.2.1896 and Balajiram got exclusive right of the management of the Trust. As Balaji Ram lead a wayward lift. Rajaram @ Rajaram Prasad fraudulently got a deed executed in his favour. Rajaram was having no male issues and executed a Will on 21.6.1939 in favour of his only daughter Lakshmi Bai and Rajaram had no right to execute the said Will in favour of his daughter. Lakshmi bai executed a Will dated 25.3.1941 in favour of one Kannamlal Prasad and another Will on 19.10.1955 in favour of one Vasudevan cancelling the earlier Will dated 26.3.1941. She cancelled that Will by executing a third Will dated 4.7.1974 in favour of the petitioner Vasanthy under suspicious circumstance. Lakshmi Bai had no right to convey the managerial right to stranger, other than the lawful heirs. The Will dated 4.7.1974 was created with false recitals regarding relationship with her, as sister. Since the parentage of Vasanthy was not known so as to come under the Orbit of hierarchy. Lakshmi Bai was no power to create a new line of trustees opposed to terms and conditions of the grant. The due execution, validity, attestations and acceptance of above three Wills i.e. 26.3.1941, 19.10.1955 and 4.7.1974 and denied by the defendants. The plaintiff and the 1st defendant are trying to seek

shelter under false claims. The 1st defendant has no right over the property. The plaintiff seeking probate is barred by law of limitation and it has no cause of action. Lakshmi Bai had no right to bequeath 4.7.1974 in favour of a stranger the plaintiff herein. The findings in the Judgment in O.S.No. 886 of 1983 on the file of the District Munsif Court, Villupuram is wrong and the Will has not been validly proved. The petition is vexatious and liable to be dismissed.

5. Originally the petitioner has filed in O.P.No. 331 of 1990 and subsequently when the respondents entered into caveat, the same was converted into T.O.S.No.10 of 1991. During the pendency of this proceedings, 4th respondent Mahadeven died and his L.Rs. added as defendants 7 and 8. The 1st defendant has filed separate written statement and as the 4th defendant since dead had already filed written statement alongwith other defendants. Newly added defendants 7 and 8 had not filed any separate written statement. Originally five issues were framed by this Court on 27.10.1992 and after deleting the issues No. 2 and 4, the following issues are available for trial as serial Numbers 1,2 and 3:

1. Whether the Will dated 4.7.1974 is genuine, true and valid?
2. Whether the plaintiff is entitled to Letters of Administration?
3. To what relief the plaintiff is entitled to?

6. Issue Nos.1 and 2:

The plaintiff/petitioner Vasanthi has filed in O.P.No.331 of 1990 on the file of this Court for grant of Letters of Administration and on filing of caveat by the respondents, the original petition was converted into T.O.S.No. 10 of 1991 and the 1st defendant has filed a separate written statement, whereas Defendants 2 to 6 filed another written statement. However, both the written statements have challenged the validity and the genuineness of the Will Ex.P.I.

It is the case of the plaintiff that the testatrix Lakshmi Bai is her step sister as both of them were born to Rajaram Prasad through different mothers and as such Lakshmi Bai due to love and affection had executed the Will Ex.P.I in her name. The defendant have contended that properties in question cannot be bequeathed

in favour of the petitioner as they belonged to Kema Bai Trust and the scheme suit for the administration of the said trust is pending in O.S.No.58 of 1990 on the file of the Sub- Court, Villupuram, The next contention of the defendants is that the plaintiff Vasanthy is not the daughter of Rajaram Prasad and as such she cannot be the step sister of Lakshmi Bai as alleged in the Will and the alleged signature of Lakshmi Bai found in the Will is a rank forgery. The defendants 2 to 6 in their written statement have traced the entire history of the trust and the legal heirs of the successors and had stated that the properties cannot be bequeathed in the name of the petitioner Vasanthy.

Since the plaintiff has filed the suit under testamentary succession, we have to analyse the validity and the genuineness of the Will and while doing so we have to consider the other aspects mainly contended by the defendants 2 to 6 in their written statement to the necessary extent required under law in order to decide the validity or otherwise of the Will. Ex.P.I Will has been executed by Lakshmi Bai at Madras on 4.7.1974 and the reason for execution of the Will in favour of the plaintiff has stated in the Will are that the testatrix who was 71 years has become weak day-by-day, that she had no issues, that the propounder is her younger sister and that she had the intention to assign the management right of the properties concerned under the Will in favour of the plaintiff herein. The testatrix got the right of management of the properties through the Will dated 21.6.1939 of her father Rajaram Prasad. Earlier, the testatrix had executed a Will in favour of one Kannanlal Prasad on 26.3.1941 and the same was cancelled by the testatrix on 19.10.1955 and on the same date she had executed another registered Will in favour of one Vasudevan and the said Will was also cancelled by the testatrix on 6.1.1970. After cancellation of the said Will on 6.1.1970, the present Will Ex.P.1 has been executed by Lakshmi Bai on 4.7.1974. The validity of the Will has not been challenged on the ground that the testatrix was not having a sound and disposing state of mind and health on that date. However, the right of the testatrix to execute the Will, the valid execution and the attestation of the said Will are challenged by the defendants.

The Will was executed in the presence of witnesses (1) D. Kanmani and (2) A.T. Venkatesan, residents of Madras. The Will was registered, on the same day in the

Office of the Sub-Registrar, T.Nagar and the said witnesses have identified the testatrix Lakshmi bai in the presence of the sub-Registrar.

The plaintiff as P.W.1 has contended that Ex.P.1 is the last Will and testament of Lakshmi Bai, who died on 22.6.1981 nearly 7 years after the execution of the said Will. O.P.No. 331 of 1990 was filed before this Court on 14.8.1990. The date of filing of O.P. is immaterial provided the Will is proved as contemplated under law. The contention of the defendants that the original petition was not filed immediately after the death of Lakshmi Bai cannot be taken as a valid reason to disbelieve the Will.

The Privy Council in *Manindra Chandra Bala v. Mahalaxmi Bank Ltd.*, held

'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 same view was followed by a Division Bench of this Court in *Ammu Balachandran v. Joseph*, : AIR1996 Mad442 .

The plaintiff has contended that both the attestors are no more to examine before this Court. She has stated that one of the attestors by name Venkatesan died in 1982 and the other witness by name D. Kanmani died in 1987. One Pandurangan, who drafted the Will died in 1996 and one Subramaniam, whose affidavit the plaintiff has filed in the present proceeding, died in 1994, He was examined as witness in O.S.No. 886 of 1983 on the file of the District Munsif Villupuram and the copy of the judgment is marked as Ex.P.3. The plaintiff has applied for the deposition of Kanmani under Ex.A.9 application and the same was returned by the Office of the District Munsif, Villupuram saying that the deposition was already destroyed as per rules. The card printed for the obsequies of Kanmani is marked as Ex.P.8. As such all the persons connected with the Will Ex.P.1 are no more and in her evidence the plaintiff has stated that Pandurangan - the scribe has written the Will according to the dictation of the testatrix and the same was got in typed a day prior to the registration. The plaintiff further alleged that she was present when the Will was executed before the sub-Registrar and the witnesses Kanmani and Venkatesan had seen the testatrix executing the Will and the testatrix had seen

each one of them attesting the Will. Further, she has stated that the testatrix has affixed her left thumb impression on the Will in the presence of the sub-Registrar and those two witnesses had also identified her before the sub- Registrar. As all the witnesses connected with the Will are no more, the person who can identify the signature of the testatrix and that of the witnesses attested Ex.P.1 could be examined and accordingly the plaintiff who knows the signatures of all those persons and witnessed when those persons subscribed their signatures in Ex.P.1 has to be taken as a competent witness on whose evidence the proof of valid execution and attestation can be accepted.

Both the parties had relied on certain decisions laid down by the Supreme Court and the High Courts regarding the valid execution and attestation of a Will.

In Venkatachala Iyengar v. Thimmajamma, : AIR 1959 SC443 , their Lordships have held-

'The party propounding a Will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, reference must inevitably be made to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under S. 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting and for providing such a handwritings under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant Thus the questions to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. It would prima facie be true to any that the will has to be proved like any other document except as to the special requirements of attestation prescribed by S. 63

of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty, The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.'

In *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, : AIR 1964 SC529 Their Lordships have held-

'The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirements of attestation prescribed in the case of a will by Section 63, Succession Act The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court accepts the will as genuine.'

The same view was expressed once again by Their Lordships of the Supreme Court in *Surendra Pal v. Dr. Mrs. Saraswathi Arora*, : [1975]1SCR687 -

'The propounder has to show that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine.'

As all the witnesses connected with the Will are dead, we can rely on these decisions for taking into consideration regarding the proof required under law for a Will.

In *Mt. Gombai v. Kanchhedilal*, , the Privy Council held-

'The onus probandi lies on the persons who propounds the will, and this onus is in general discharged by proof of capacity, and the fact of execution, from which the knowledge and the assent to its contents by the testator will be assumed (Barry v. Buffin, 2 Moor P.C. 480, Ref.). But where a will is prepared and executed under circumstances which excite the suspicion of the Court it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved of the contents of the document (Tyrrell v. Painton, 1894, L.R.P. 151 and Charles Harwood v. Baker, 1840 (13) E.R. 117 Re.) Where once it has been proved that a will has been executed with due solemnities by a person of competent understanding and apparently a free agent - that is, when the propounder of the will has discharged the onus the burden of proving that it was executed under undue influence is on the party who alleges it: Boysa v. Rassborough, 1856 (6) H.L.C.2, Ref.'

This Court in Andal Ammal's Case : (1968)1MLJ356 held-

'Whenever a will is sought to be proved, the onus probandi lies upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator.'

From these decisions it is clear that the onus probandi lies upon the party propounding the Will. The onus is on the plaintiff to prove the valid execution and attestation.

The proof required is succinctly stated by the Division Bench of this Court in A.K. Gopal v. S. Vasanthan : (1993)1MLJ226 -

'Proof of execution of the Will is accepted only if the three cardinal questions are answered in the affirmative, namely, has the testator signed the Will? Did he understand the nature and effect of the dispositions in the Will? Did he put his signature to the Will knowing what is contained? and whether the special requirements of attestation prescribed by Section 63 of the Indian Succession Act had been complied with,'

All the three requirements as held in the decision have to be proved by the plaintiff herein.

Their Lordships of the Supreme Court *Naresh Charan Das Gupta v. Paresh Charan Das Gupta*, : [1955]1ITR1035(SC) held-

'It cannot be laid down as a matter of law that because the witness did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in evidence whether the attesting witnesses signed in the presence of the testator. This is a pure question of fact depending on appreciation of evidence.'

The proof required for a valid attestation has been stated by Their Lordships in the above decision. The plaintiff who was present at the time of attestation has spoken to about the attestation by the two witnesses Kanmani and Venkatesan. One of the circumstances which can be taken in favour of the plaintiff is that the Will was executed before the sub-Registrar, T. Nagar, Madras and the plaintiff who accompanied the testatrix had witnessed the execution and attestation of the Will.

This Court in *Lakshmi Ammal v. Lakshmanan*, 1988 (II) MLJ 469 at page 476 held-

'A Will is a document required by law to be attested and under S. 68 of the Indian Evidence Act 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

Assuming without admitting that all these attesting witnesses are no more, the will has then to be proved under S. 69 of the Evidence Act, by showing 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.'

A Division Bench of this Court in *Vaidehi v. Govindarajan* : (1992)2MLJ393 held-

'It cannot be contended by any stretch of imagination that in cases where attesting witnesses were dead, a Will could not be proved otherwise. The method in such a situation will be one as envisaged under Section 69 of the Evidence Act. All that is required is to prove the attestation by bringing on record the evidence of a witness that the attestation was in the handwriting of that person who was described as the attesting witness and that he had put his signature.'

These two decisions based on Section 69 would go to show that in the circumstances when both the attesting witnesses could not be examined, the signature of any one of the attesting witnesses in his handwriting can be proved through a witness who knows the signature of the said attesting witnesses. The plaintiff as P.W.1 has clearly stated that she knows the signature of both attesting witnesses and identified their signatures as she was present at the time of attestation of Ex.P 1 and as such the proof required under law has been satisfied by the plaintiff.

One of the reasons which can be taken in favour of the plaintiff is that the Will has been registered on the same day by the sub- Registrar, T.Nagar and the attestors of Ex.P.1 stood as identifying witnesses before the sub-Registrar for the purpose of registration. However, the mere registration of the Will itself cannot prove its genuineness and other circumstances should also go in favour of the genuineness.

Their Lordships of the Supreme Court in Rani Purnima Devi v. Kumar Khagendra Narayan Deb, : [1962]3SCR195 held-

'If a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the

will.'

As Ex.P.1 Will has been registered on the same day, we have to consider the various suspicious circumstances surrounding the Will as contended by the defendants herein.

One of the main contentions of the defendants is that the testatrix Lakshmi Bai used to sign only in Tamil, whereas in Ex.P.1 the alleged signature of the testatrix is found in English. To prove that the testatrix used to sign only in Tamil, the defendants have marked Exs. D.3 to D.5 wherein the testatrix has signed only in Tamil. It was contended on the side of the plaintiff that the testatrix used to sign in Tamil and English and in number of documents she had subscribed her signature in English. In Ex.P.1 she has signed in English. It is immaterial whether the testatrix had signed in Tamil or in English or in any other language and the only question which has to be gone into is whether the testatrix has signed by way of execution of the said Will, Ex.P.1. The plaintiff has deposed that the testatrix has signed the Will Ex.P.1. As all the witnesses connected with the Will Ex.P.1 are no more, the plaintiff has no chance of examining any one of them and she has relied upon Section 69, Evidence Act to prove the valid execution and attestation and as things stand except the plaintiff nobody else who was present at the time of execution and attestation is available, the evidence of plaintiff has to be taken in favour of the valid execution and attestation. P.W.2 the Finger Print Expert who compared the Thumb impression of the testatrix in Ex.P.1 has given mark 'Q' for thumb impression on the reverse of the first page of the Will Ex.P.1 executed by R. Lakshmi Bai and gave mark 'A' to the thumb impression on the reverse of the first page of the lease deed dated 26.6.1978 and opined that on all aspect both thumb impressions 'Q' & 'A' resemble as one and the same and they are of one and the same person. The enlarged photographs of the thumb impressions 'Q' & 'A' are marked as Exs. C.1 and C.2 respectively and the findings with the detailed explanation given as a report is marked as Ex.C.3. In the cross-examination nothing favourable was elicited and the expert has clearly stated that the ridge characters are important and they are similar in both the impressions. The enlarged photograph of C.1 is Ex.C.4 and the enlarged photograph of C.2 is Ex.C.5. In those photographs the ridge characters are similar and further he has

opined C.4 and C.5 are that of one and the same person. In these circumstances, there is ample proof on the side of the plaintiff that Lakshmi Bai the testatrix who executed the tease deed dated 26.6.1978 wherein her admitted thumb impression is found has also executed Ex.P.1 Will. When more acceptable proof has been produced, the signature of Lakshmi Bai whether it is in Tamil or in English is immaterial to prove the validity of the Will.

The other suspicious circumstance raised by the defendants are that the age of the plaintiff Vasanthi is shown as 47 years in the original petition filed in the year 1990 and if so she must have been born in 1943, whereas Rajaram Prasad died in the year 1939 and therefore she is not the daughter born to Rajaram Prasad. The plaintiff has explained it by saying that her age stated in the O.P and the previous suit is only typographical error and her real age was 51 as she was born on 1.2.1939 and Rajaram Prasad, after execution of the Will in favour of Lakshmi Bai on 21.6.1939, died thereafter. The admission of P.W.1 that her mother was 25 years and Rajaram Prasad was about 60 years old on the date of her death and Rajaram Prasad would not have married a lady who was 10 years younger than to his own daughter Lakshmi Bai and begotten a child the plaintiff herein, are all questions not quite relevant to the purpose of deciding the validity of the Will. The plaintiff has given her date of birth as 1.2.1939 and Rajaram Prasad died thereafter. The said reason stated by the defendants cannot attract our consideration as the Will Ex.P 1 was executed in her favour by Lakshmi Bai and not by Rajaram Prasad. The very purpose of execution of Will is to interfere with the normal line of succession.

The Supreme Court in *Rabindra Nath v. Panchanan Banerjee*, : AIR 1995 SC1684 held-

'...the whole idea behind execution of Will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially.'

In these circumstances the arguments of the defendants cannot be accepted.

Another suspicious circumstance put forward by the defendants is that the plaintiff's mother was a lady belonging to another community, that she was a servant maid, that the plaintiff was not the step sister of Lakshmi Bai, and that the plaintiff was married a Christian and therefore Lakshmi Bai would not have executed the Will in favour of the plaintiff are all reasons devoid of merits and considerations white weighing the validity of a Will.

In *Gopalan Nambiar v. Balakrishnan Nambiar*, : [1995]2SCR585 the Supreme Court held that the whole of estate given to son in exclusion of daughter was not sufficient to generate suspicion regarding the Will.

In *Misri Lal v. Smt. Daulati Devi*, : AIR 1997 SC3819 the Will was executed in favour of some beneficiaries who were of different castes leaving the close relatives and it was held that it cannot be an objection to the validity of the Will and what is necessary to prove a Will is that of the testamentary capacity of the testator, the true and valid execution of the Will and a satisfactory explanation by the propounder regarding the suspicious circumstances which may bring a cloud over the validity of the Will.

All these decision would go to show that the reasons shown by the defendants as suspicious circumstances, cannot be accepted.

In *Brij Mohan Lal Arora v. Girdhari Lal Manucha*, : AIR 1978 SC1202 the Supreme Court held that a seventy years old widow executed a Will and it was proved that the testatrix was of sound disposing state of mind though physically incapable of signing her name at the time of execution of Will. The testatrix bequeathed all her property in favour of her brother's grandson in whom she reposed full confidence, leaving her husband's brother. Those reasons were raised as suspicious circumstances surrounding the Will. The Apex Court held that such circumstances were not proved and the execution of the Will was valid. The facts are similar to the instance case and the decision of the Apex Court in that case is squarely applicable to the case on hand.

In the instant case many of the letters written by Lakshmi Bai, exhibited on the side of the plaintiff would go to show that she had a close relationship with the

plaintiff and her family members. The plaintiff has stated that after the execution of the Will, Lakshmi Bai, who lost her husband and had no issue, was living with the plaintiff at Madras and when she went to Villupuram she died there itself. The information was conveyed to Vasanthi and she and her son performed the obsequies of Lakshmi Bai. All these circumstances are sufficient enough to prove that Lakshmi Bai has executed the Will in favour of the plaintiff herein.

The major contention raised on the side of the defendants 2 to 8 is that Lakshmi Bai had no right to interfere with the line of succession of the trust properties and to execute the Will in favour of the plaintiff, and as such the Will is totally invalid. Even in the written statement filed by the defendants 2 to 6 it was contended that Lakshmi Bai has no right to execute the said Will. The defendants have not challenged the execution of the Will in favour of Lakshmi Bai by her father Rajaram Prasad on 21.6.1939. Thereafter, Lakshmi Bai had executed two earlier Wills and cancelled both of them. The execution of those two Wills are also not challenged by the defendants. It is only after execution of the present Will, Ex.P.1, the defendant had raised such a plea and they had also filed a suit before the sub-Court at Villupuram and the same is pending. The Court which is dealing with grant of probate cannot go into the question of title. What the defendants have raised in the written statement is nothing but a pure question of title over the said properties and they can agitate their right of title to the properties before the Civil Court and not before the probate Court.

In *Thakurain Raj Rani v. Dwarka Nath Singh*, AIR 1946 Oudh 193 it was held that the probate Court has no jurisdiction to decide the question of title.

In *Smt. Kamala Rajamanikkam v. Smt. Sushila Thakur Dass*, AIR 1983 All. 90 it was held-

'It is well established that the jurisdiction of the Probate Court is limited only to the consideration of the validity of the will and it cannot concern itself with the disputed questions of title to the property which must be decided by a regular civil court.'

Even otherwise it is well settled principle of law that the probate court cannot enter into the question of title, and as such we cannot go deep into the objections raised

by the defendants 2 to 8 and decide the title to the properties.

This Court adjudicating the grant of probate cannot decide the question of title. The plaintiff herein has made-out a clear case for grant of letters of administration in her favour.

In *Iswardev Narin Sing v. Kamta Devi*, : AIR 1954 SC280 , the Supreme Court Held:

'The question whether a particular bequest is good or bad is not within the purview of the Probate Court,'

When once the Will is proved to be true and it was executed by the testatrix, it is not for this Court to embark upon an enquiry whether the disposition made therein are fair and just.

For all these reasons, the plaintiff has proved that the Will Exp.1 is true, genuine and valid and she is entitled for grant of letters of administration.

7. Issue No. 3: In the result, suit is decreed and issue letters of administration in favour of the plaintiff on executing a bond for sum of Rs.5,000.

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