

Sampathlakshmi and ors. Vs. E.A. Murthy

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Court : Chennai

Decided On : Jun-18-2001

Reported in : AIR2001Mad355

Judge : M. Chockalingam, J.

Acts : [Succession Act, 1925](#) - Sections 283

Appeal No. : T.D.S. No. 29 of 1992

Appellant : Sampathlakshmi and ors.

Respondent : E.A. Murthy

Advocate for Def. : T.R. Sethuraman, Adv.

Advocate for Pet/Ap. : S.Y. Raghuraman, Adv.

Judgement :

ORDER

M. Chockalingam, J.

1. This suit has been filed for issue of a probate in respect of the last Will and Testament of E. Ponnambal wife of late Dr. A. Ekambaram, executed at Madras on 19-11-1990 in the presence of the witnesses.

2. The plaintiffs have alleged in the plaint that E. Ponnambal was ordinarily residing at No. 54, IV Main Road, Gandhinagar, Adyar, Madras and she died at Sivaram Nursing Home, Adyer, Madras. She left behind her one son viz. E.A. Murthy and three daughters viz. Sampathlakshmi, Vatsala and Ahalya as legal heirs. They are only entitled to the assets of the deceased under the Will. The jewels have been divided and given to the grand children. The last Will and Testament of the deceased was duly executed by her at Madras on 19-11-1990 in the presence of the witnesses and it has been registered at the Sub-Registrar's Office at Virugambakkam. Plaintiffs are the executors appointed under the Will. Hence the suit.

3. The defendant filed a written statement alleging that he is the only son of E. Ponnambal. The Will in respect of which probate is sought for is not a genuine one as will be evident from various circumstances. He was 17 when his father passed away in 1954. His father Dr. Ekambaram had borrowed heavily and was unable to repay his creditors. The defendant and his three sisters and their parents were all accommodated in the residence of Mrs. Chandra Lakshmanaswamy Mudaliar, elder sister of the testatrix. It was the desire of the testatrix that the family should have a house of its own. She requested her brother-in-law Dr.V.G. Lakshmanaswamy Mudaliar to help her with funds. At that time Madras Cooperative House Constructions Society had a scheme under which houses could be bought on hire purchase. Dr. Lakshman-swamy Mudaliar helped the testatrix for the purchase of the house property at No. 54, 4th Main road, Gandhi Nagar, Adyar, Madras in the name of the testatrix. The defendant discharged the loan amount which his mother had obtained from Dr. Lakshmanswamy Mudaliar for the purchase of the said house. The defendant was first commissioned in I.A.F. in February 1959 as a Pilot and he retired in February 1989 as Wing Commander. Out of his earnings the said loan was paid off. He also cleared all the debts that had been incurred by the family in connection with the marriages of his sisters Vathsala and Ahalya. From the time of his marriage till he retired from service, the testatrix stayed only with him except for brief periods when she would visit her daughters. Some time in 1973, he learnt from his mother that she had executed a will bequeathing the said house in his favour. In 1973 his mother was aged 62 years. She was of a sound and disposing state of mind. In October 1985 his

mother was operated for breast cancer at the command Hospital, Air Force, Bangalore. His mother was also suffering from ischemic heart disease, hypertension, diabetes and cataract of one eye. She was operated for cataract of the other eye earlier. For the said ailments, she was receiving treatment at Bangalore. After his retirement, he moved along with wife and 2 daughters to his mother's house at No. 54, 4th Main Road, Gandhi Nagar, Adyar, Madras. His mother also came with him. He joined in Brilliant Computer Centre as Deputy Manager (Admn.) and his wife joined in Brilliant Tutorials. During their absence the first plaintiff would visit their mother. In or about November 1990, the first plaintiff took the testatrix to her house and the testatrix remained with her for about a fortnight. After her demise and when the ceremonies were in progress, the first plaintiff produced a xerox copy of the Will said to have been executed by his mother dated 19-11-1990. In 1990, the testatrix was aged about 80. The recitals in the said Will run counter to those in the Will dated 12-8-1973. The execution of the said Will dated 19-11-1990 was not conveyed to him by his sisters. The said Will had been registered in the office of the Sub-Registrar, Virugambakkam. It is alleged in the said Will that the testatrix was a resident of No. 54 Main Road, Gandhi Nagar, Adyar, Madras. Under the circumstances, it is not known how the said Will had been registered at Virugambakkam. In November 1990, his sister the first plaintiff took his mother for a stay of about 15 days. The first plaintiff must have colluded with the other relatives and should have brought about this Will. His mother had absolutely no independent source of income. He had lost all his life's earnings in a case of cheating. The testatrix had all along been staying with him and he was continuously looking after her. Under these circumstances it was impossible for her to have changed the Will on her own and that too without information to him. The alleged Will is one procured by practising deception upon the testatrix and no legal effect can be given to the same. Hence the suit may be dismissed with costs.

4, On the above pleadings the following issues were framed :

- 1) Whether the Will dated 19-11-1990 is true, valid and binding on the parties?
- 2) Whether the Will had been procured by practice of deception upon the deceased and that no legal effect can be given to it?

3) Whether the plaintiffs are entitled to probate?

4) To what relief?

5. ISSUES 1 to 4 :--The plaintiffs have filed the suit for issue of a probate alleging that the mother of the first plaintiff Ponnambal executed her last Will and Testament on 19-11-1990 in the presence of the two attesting witnesses.

6. The second plaintiff examined himself as P.W.1. He would depose that the first plaintiff is his sister-in-law i.e. his wife's sister. The testatrix is his mother-in-law. P.W.1 is Vathsala's husband. Ex. P1 is the original registered Will executed by his mother-in-law on 19-11-1990. In Ex. P1 Will late Ponnambal had bequeathed equal share in the said property had bequeathed equal share in the said property to her 3 daughters and 1 son. She had stated in Ex. P1 that the jewels adorned by her and weighing about 11 sovereigns have to be shared equally amongst her grand daughters through her four issues. Accordingly the said jewels were distributed. The testatrix died on 23-7-1991. Ex. P2 is the death certificate. She had executed a Will on 12-8-1973. Ex. P3 is the said Will. She had executed another Will on 26-7-1989 which is marked as Ex. P4. Ex. P5 is the notebook maintained by her. The writing in Ex. P5 that all her jewels were to be distributed amongst her grand daughters is marked as Ex. P6, while the writing that she proposes to give equal share to all her children is marked as Ex. P7. Ex. P8 is the letter written by Ponnambal to the first plaintiff on 5-11-1990 asking her to make arrangements for a Will bequeathing equal share to all her children. On the date of execution of the Will Ponnambal was hale and healthy and was in a sound and disposing state of mind. She registered the Will at Sub-Registrar's Office, Virugambakkam. P. W. 1 accompanied her. Ponnambal signed in Ex. P1. After she signed, the attesting witnesses also signed in the Will. The land and house mentioned in the Will was purchased under a hire purchase agreement executed in the year 1950. The sale was registered on 2-7-1969, in the name of the testatrix. She was living in a portion of the Will property. The remaining portion was occupied by the first plaintiff as a tenant, on a rental of Rs. 300/- pm. When the defendant retired from service and came back to Chennai, the first plaintiff vacated the portion. Ponnambal sustained a fracture in the hand in 1991. She was

admitted in Swarnam Hospital at Adyar. She was looked after by the wife of P.W.1 and his sister-in-law Ahalya.

7. One of the attesting witnesses viz. S. Subbiah was examined as P.W.2. His evidence is that the testatrix was the mother-in-law of Inspector Saravanan, who was his colleague. Before Ponnambal executed the said Will he had seen her. The signature found in Ex. P1 Will is that of the testatrix. He signed in Ex. P1 Will as the second attesting witness and also as the first identifying witness. The other attesting witness is Mr. Ramaswamy. Ex. P1 was drafted by one Kuppusamy. Ponnambal signed in Ex. P1 Will in their presence, and thereafter they signed in the Will. The said Will was executed on 19-11-1990 and registered in the Sub-Registrar's Office between 3 and 4 p.m. At the time of execution of the Will, Ponnambal was in a sound and disposing state of mind. Prior to the registration, the testatrix was enquired by the Sub-Registrar as to whether she was in a sound and disposing state of mind and health and whether the said Will was drafted according to her opinion and also whether she was executing the Will out of her own volition. At the time of registration, the testatrix, P.W.2, Ramasamy, Mr. Srinivasan, Mr. Saravanan and the First plaintiff were present. Ex. P9 is the affidavit stating that P.W.2 was present at the time of execution and registration of the Will.

8. The defendant examined himself as D.W. 1. He would state that his father died on 10-8-1954. At the time of his death only the first plaintiff was married. His mother did not own any property, and did not have any source of income. Dr. Lakshmanaswamy Mudaliar advanced money to them for purchasing the property under hire purchase scheme. All the marriage expenses for the weddings of Ahalya and Vathsala were collected by his mother from his savings which he had given to her. Ex. D1 is the letter dt. 18-8-1991 written by the Mrs. Ahalya to him. Exs. D2 and D3 are the letters written by his mother on 2-7-1984 and 1-6-1989. Ex. D4 is also the inland letter written by his mother. His mother did not inform him about Ex. P1 Will. She never stayed at Vadapalani or Saligramam. After this suit came up in the list, a compromise was entered into. D.W. 1 has also deposed the averments made in the written statement.

9. Arguing for the plaintiffs, the learned counsel would submit that the testatrix Ponnambal had three daughters Sampath-lakshmi, Vathsala and Ahalya and one son Murthy; that the husband of the testatrix pre-deceased her; that she died on 23-7-1991 leaving behind her the above children and the only immovable property situated in door No. 54, 4th Main road, Gandhi Nagar, Adyar, Madras, the subject matter in the Will; that Ponnambal in a sound and disposing state of mind executed a registered Will under Ex. P1 on 19-11-1990 in the presence of the two attesting witnesses S. Subbiah, examined as P.W.2 and Ramasamy; that in order to prove the Will, the plaintiffs apart from the propounder have examined one of the attesting witnesses Mr. Subbiah as P.W.2, who has categorically deposed as to his presence at the time of the execution, attestation and registration of the document; that his evidence has not been shaken in any way; that the first plaintiff, third plaintiff and P.W. 1 who is son-in-law of the testatrix, have been appointed as executors; that the subject matter of the Will viz. the immovable property situated at No. 54, 4th Main Road, Gandhi Nagar, Adyar, Madras, exclusively belonged to the testatrix; that in the said testament she has bequeathed equal share to all her children viz. three daughters and one son; that as per the recitals in the said Will, the jewels owned by Ponnambal weighing about 11 sovereigns were to be shared equally among the grand daughters; that the defendant's wife had received her share in those jewels; that prior to the execution of Ex. P1 Will Ponnambal executed two other Wills under Exs. P3 and P4 on 12-8-1973 and 26-7-1989 respectively; and while executing Ex. P1 Will she has cancelled her earlier Wills; that Ponnambal was maintaining Ex. P5 note-book wherein she has written the terms of the Will executed by her and she has also stated that all her jewels were to be distributed among her grand daughters; that in the said notebook she has also written that she proposes to give equal share to all her children including her daughters which part is marked as Ex. P7; that the testatrix on 5-11-1990 has written a letter to the first plaintiff asking her to make arrangements for a Will bequeathing equal share to all her children; that D.W.1 has admitted that the said letter is in the handwriting of his mother; that this would clearly indicate the truth and genuineness of Ex. P1 Will; that Ex. P1 Will has been registered in the Virugambakkam Sub-Registrar's Office the very day; that the contention of the defendant that Ex. P1 Will was not a genuine one and was obtained by the first

plaintiff by playing deception on the testatrix during her short visit to the first plaintiff's house was not correct and it was utter falsehood; that the contention of the defendant that the property was purchased from out of the loan amounts raised from Lakshmanswamy Mudaliar and which were subsequently paid out of the income of the defendant and that it was the defendant who contributed for the marriages of his two sisters is thoroughly falsified by his own evidence; that though the testatrix executed two Wills earlier, there were compelling circumstances for cancelling those Wills at the time when she executed the third Will under Ex. P1 in 1991; that it is pertinent to state that she herself has given the reasons for executing the third Will; that there were no suspicious circumstances attendant on the execution of the Will; that Ex. P1 Will has come out of free Will and volition of the testatrix; that the plaintiff has proved as required by law, the due execution, attestation and registration of the testament while the defendant has failed to prove that the Will was procured by practising deception among the deceased and hence the probate has to be issued as prayed for by the plaintiffs.

10. Countering to the above contentions of the plaintiffs, the learned counsel appearing for the defendant would submit that the Will in respect of which probate is sought for by the plaintiffs is not a genuine one; that it was prepared by practising deception upon the deceased Ponnambal and hence no legal effect could be attached to the same; that the husband of the testatrix Ekambaram, who was the Medical Practitioner was declared insolvent; that during his lifetime the first daughter alone was given in marriage and two other daughters were to be married; that the only immovable property of Ponnambal situated in No. 54, 4th Main Road, Gandhi Nagar, Adyar, Madras was purchased from Madras Co-operative House Constructions Society's scheme under hire purchase; that at the request of the testatrix, her brother-in-law Dr. Lakshmanswamy Mudaliar helped with money for the purchase of the property in the name of Ponnambal; that the defendant who was commissioned in the Indian Air Force in 1959 as a Pilot began to earn and out of his earnings the loan amount was discharged; that the defendant has also cleared the debts that was incurred by the family in connection with the marriage of the two sisters Vathsala and Ahalya; that the defendant after his marriage in 1968 was in different places and his mother was all along with him except for brief period when she used to visit her daughters at Madras; that during

the later part of her life, the testatrix for a period of nearly 10 years was suffering from severe health problem viz. ischemic heart disease, cataract in one eye, hypertension and diabetes and she was also once operated for the breast cancer in the secondary stage and apart from jaundice also and it was the defendant who given her treatment in Bangalore; that the testatrix has informed the defendant of the execution of her Will in the year 1973 which is marked as Ex. P3; that after the retirement in 1989, the defendant was living in Madras with his wife in the suit property; and the testatrix was also residing with him all along; and thus there was no occasion for her to execute any Will as found under Ex. P1 and she had no reason to cancel her earlier Will executed in the year 1973 wherein she has bequeathed all her properties in favour of her son the defendant herein; that the defendant had no knowledge about the second Will alleged to have been executed by the testatrix in the year 1989; that in November 1990, the first plaintiff approached the defendant and wanted to take his mother and keep with her at Anna Nagar house for two weeks and accordingly she took Ponnambal with her; that at that time the testatrix was not in a sound and disposing state of mind; that the defendant came to know about Ex. P1 Will when her sister Ahalya showed a xerox copy of the same during the ceremonies of his mother; that a perusal of Exs. D1 to D4 letters would clearly reveal that Ex. P1 Will was obtained from the testatrix by playing deception; that it is also not correct to state that because of the loss incurred by the third plaintiff who invested some money on the recommendations of the defendant, the testatrix had executed Ex. P1 Will, since the defendant had no knowledge about such investment made by the first plaintiff; that it was the defendant who met all the funeral expenses of the mother; that the plaintiffs have examined only one of the attesting witnesses; that the so-called attesting witness P.W. 2 has categorically stated that the first plaintiff's husband viz. Saravanan was Inspector of Police under whom he served as a constable and he had close association with that Saravanan also and because of that, naturally he has come forward to give false evidence in respect of the execution, and attestation of the document and hence his evidence has got to be rejected as one interested in the plaintiff; that there are number of suspicious circumstances attendant on the execution and attestation of the Will; that the plaintiffs have not removed those doubts and suspicious circumstances and thus they have not

strictly proved Ex. P1 document as required by law and hence the request of the plaintiffs has got to be rejected and the suit has got to be dismissed.

11. The plaintiffs have come forward with a request for grant of probate alleging that the mother of the first plaintiff Sampathalkshmi executed Ex. P1 Last Will and Testament on 19-11-1990 in a sound and disposing state of mind at Madras in the presence of two attesting witnesses viz. Mr. Subbiah and Mr. Ramasamy. The defendant has seriously contested the suit on the grounds that his mother was not in a sound and disposing state of mind at the time of execution of the testament and the first plaintiff has practised deception upon the testatrix and obtained the said Will and thus the said Will is of no legal effect and consequence, since it is tainted with invalidating factor of suspicion.

12. As narrated above, the facts that are admitted by the parties can be stated as follows :

The testatrix viz. Ponnambal who died on 23-7-1991 as evidenced by Ex. P2 certificate, had three daughters viz. Sampath-lakshmi, the first plaintiff herein, Vathsala and Ahalya and one son the defendant herein. The husband and parents of the testatrix predeceased her. The second plaintiff and the third plaintiff are the husband of the other two daughters of the testatrix. The immovable property, the subject matter in the Will situated in door No. 54, 4th Main Road, Gandhi Nagar, Adyar, Madras was purchased in the name of the testatrix during the lifetime of her husband under the hire-purchase scheme of the Madras Cooperative House Constructions Society in the year 1950 for a sale consideration of Rs. 11,663/- and the instalments were paid from the year 1950 to 1966 by the testatrix, who got the sale-deed registered in her favour in the year 1969. At the time of the death of the testatrix's husband, the first daughter viz. the first plaintiff herein was married and the other two daughters and the son, the defendant herein were to be married. The testatrix was neither employed nor owned any movable or immovable property, except her 11 sovereigns of gold jewels and the only immovable property, the subject matter of the Will. The defendant joined Indian Air force as a Flight Cadet in July 1957 and commissioned on 7-2-1959. He got married on 31 - 5-1968 and he worked at different places till his retirement in 1989. Before the

purchase of the Will property and during the time, all the family members of the testatrix were residing along with Dr. Lakshmanaswamy Mudaliar, who is the husband of the sister of the testatrix. The Will property was let out for some time and the testatrix who collected the rent was paying the same towards the repayment of the instalments of the hire-purchase amounts. After the death of the testatrix's husband, the testatrix was living in a portion of the property in question for some time while rest of the portion was let out to a tenant. From the time onwards till her lifetime, the testatrix continued to have her belongings in the said house. From the year 1975, the first plaintiff's family occupied the main portion of the said house while the testatrix was in possession of a smaller portion. After the retirement of the defendant in 1989, the first plaintiffs family vacated from the said house and the same was occupied by the defendant's family and the testatrix was also residing there till her death. The testatrix executed Ex. P3 registered Will on 12-8-1973.

13. According to the plaintiffs, the testatrix executed a registered Will, as found under Ex. P1 on 19-11-1990 in a good and sound disposing state of mind and she has cancelled her earlier two registered Wills dated 12-8-1973 and 26-7-1989 marked as Exs. P3 and P4 respectively and she has also appointed the plaintiffs as executors. In order to prove the testament, the propound-ers have examined one of the attesting witnesses viz. P.W.2 Subbiah, who has categorically deposed that even before the testatrix executed the Will, he had seen her; that Ex. P1 is the Will executed by Ponnambal and the signature found in Ex. P1 testament was that of the testatrix; that he had signed in Ex. P1 as the second attesting witness and also as the first identifying witness; that the other attesting witness and the identifying witness was Ramasamy and he knew him; that Ex. P1 was drafted by one Mr. Kuppusamy who was a document writer in the Sub-Registrar's Office; that he had read out the Will; that Ponnambal signed in Ex. P1 will in their presence and thereafter the other attesting witness and himself signed in the same; that Ex. P1 Will was executed on 19-11-1990 and registered in the Sub-Registrar's Office between 3.00 and 4.00 PM on the same day; that Ponnambal was in a sound and disposing state of mind; that she climbed up the stairs to the first floor to reach the office of the Sub-Registrar for getting Ex. P1 Will registered; that prior to the registration of the Will the Sub-Registrar enquired the testatrix Ponnambal as to

whether she was in a sound and disposing state of mind and also whether the said Will was drafted according to her information and also whether she was executing the Will out of her own volition; that Ex. P9 is the affidavit submitted before the Court stating that he was present at the time of execution and registration of the Will. A careful scrutiny of the evidence of P.W.2, the attesting witness would clearly reveal that his evidence is natural, cogent and trustworthy. The contention of the defendant's side that the witness himself has admitted that he worked as a constable under one Mr. Saravanan, Inspector of Police, who was the husband of the first plaintiff and he was also associated to him a long time and hence his evidence has got to be rejected as one interested cannot be countenanced. The Court is of the view that that is not a strong or acceptable reason to disbelieve or reject his testimony. From the evidence of P.W. 2 it could be seen that the other attesting witness is presently indisposed because of his heart problem. Though the propounders of the Will have examined only one witness viz. P.W.2, his evidence as stated above is cogent and inspires the confidence of the Court.

14. The learned counsel appearing for the defendant would urge that the testatrix was aged more than 80 and was suffering from severe health problems viz. ischemic heart diseases, hyper-tension, diabetes and cataract of one eye and she was also operated for breast cancer in secondary stage and hence she could not have been in a sound and disposing state of mind. From the evidence of P.W.1 and the attesting witness P.W. 2, it is clear that though the testatrix was 80 years old at the time of the execution of the Will, she was possessed of her mental faculties intact, and she was in a sound and disposing state of mind. Even if the testatrix was suffering from the above ailments, it cannot be stated that by all those ailments, she would have lost her mental faculties. No material is available on record to show that she has neither lost her mental faculties nor been in a sound and disposing state of mind at the time of execution of Ex. P.1 Will.

15. The prime defence put forth by the defendant's side is that Ex. P1 Will was procured by practising deception upon the testatrix taking undue advantage of her age and ailments. Relying on Exs. D1 to D4 letters, the learned counsel would submit that the testatrix was actually living with defendant in the Will property from the year 1989 till her lifetime, and the first plaintiff who took the testatrix to her

house for a period of 15 days has taken undue advantage of the ailments of the aged testatrix and influenced her and practising deception and exercising undue influence, has obtained her signature in Ex. P1 testament. This contention of the defendant's side that the first plaintiff has procured the testament by practising deception and exercising undue influence over the testatrix cannot be countenanced for more reasons than one. A perusal of the documentary evidence adduced by the plaintiff's side would show that the testatrix executed three Wills on 12-8-1973, 26-7-1989 and 19-11-1990 marked as Exs. P3, P4 and P1 respectively. The defendant has well admitted the execution of the first Will dated 12-8-1973 marked as Ex. P3, but he would plead no knowledge of the execution of Ex. P4 second Will dated 26-7-1989. It is pertinent to note that Ex. P4 dated 26-7-1989 was also a registered document. The testatrix as clearly averred under Ex. P1 that she had executed previously two registered Wills one on 12-8-1973 and the other on 26-7-1989 and she has cancelled both of them by executing Ex. P1 testament. It is pertinent to note that all the three Wills viz., Exs. P3, P4 and P1 are registered documents. Though the defendant has admitted the execution of a Will under Ex. P3 on 12-8-1973 by the testatrix, he has not stated anything about Ex. P4 Will dated 26-7-1989, and he has challenged Ex. P1 testament by stating that it was procured by practising deception on the testatrix. Despite his knowledge about the two subsequent Wills dated 26-7-1989 and 19-11-1990 executed by his mother, he is desirous of sticking on to the first Will dated 12-8-1973, since the entire property was bequeathed in his favour under Ex. P3 Will. It is not disputed by the defendant that the testatrix was owning 11 sovereigns of gold jewels. The recital in Ex. P1 would show that she was wearing those jewels at the time of the said document and they were to be equally divided after her death among her grand daughters through her daughters and through her son, the defendant herein. The defendant has admitted that his mother had some jewels and she has written that the said jewels were to be given to her all grand daughters and as per her wishes the jewels were given to all her grand daughters and his wife had also received some jewels.

16. One of the strong circumstances which would be indicative of the truth and genuineness of Ex. P1 document is Ex. P8 letter written by the testatrix to the first plaintiff on 5-11-1990 asking her to make arrangements for a Will bequeathing

equal share to all her children. It remains to be stated that the defendant has categorically admitted that Ex. P8 letter is in the handwriting of his mother. It is pertinent to note that Ex. P8 letter dated 5-11-1990 was written about 15 days prior to the execution and registration of Ex. P1 on 19-11-1990. Ex. P8 reads as follows :

5-11-90

('Vernacular matter is omitted)

E. Ponnambal.'

As rightly contended by the learned counsel for the plaintiffs, one of the circumstances for cancellation of the earlier two Wills and to execute the third Will as found under Ex. P1 was that the last daughter Ahalya had lost Rs. 1.50 lakhs at Bangalore by way of financing somebody for interest on the recommendations of the defendant and could not recover the same and has incurred a loss. The defendant has admitted that at the time of execution of Ex. P1 Will, all his life earnings were lost in a case of cheating by one Mr. Rao, but he would state that he did not know whether the first plaintiff had lost money through the said Rao. This would clearly reveal that he is suppressing the fact of investment made by the third plaintiff on his recommendation and the loss sustained by him. As recited in Ex. P1 Will, the loss sustained by the third daughter of the testatrix Ahalya and the responsibility of her son viz. the defendant herein for the said loss were the reasons which necessitated the testatrix to cancel her earlier two Wills and to execute Ex. P1 testament distributing the immovable property equally to all her children viz. three daughters and one son.

17. The contention of the defendant that his mother, the testatrix could not have executed Ex. P1 will since it was he who paid back the loans availed from Dr. Lakshmana-swamy Mudaliar for the purchase of the property and also cleared all the debts that were incurred by the family in connection with the marriage of his two sisters Vathsala and Ahalya has to be rejected as false. It is not disputed that the property was purchased in the year 1950 under the hire-purchase scheme of the Madras Co-operative House Constructions society for a sum of Rs. 11, 663/-.

The defendant himself has admitted that the property was let out and his mother was collecting the rental and paying the instalments and got the sale-deed registered in her favour in 1969. It is pertinent to note that the property was purchased in the name of the testatrix even during the lifetime of her husband. There is no material available to show that the Instalments were paid out of the monies given by the defendant, to his mother. The contention of the defendant that he has made payments for clearing the debts incurred for the celebration of the marriages of his two sisters Vathsala and Ahalya is falsified by his own admission stating that he did not even know where and how the marriages of his sister Ahalya was conducted and he did not attend the marriage also.

18. The defendant has much relied on Ex. D1 letter written by his sister Ahalya on 18-8-1991, Exs. D2 and D3 two writings of the testatrix on 2-7-1984 and 1-6-1989 and an undated inland letter under Ex. D4 written by her. After a perusal of the above documents (Exs. D1 to D4), it remains to be stated that all or any one of the documents do not advance the defence in any way, either, or any evidentiary value could be attached to those documents. A reading of Ex. D1 would clearly reveal that the writer of the letter Ahalya had no occasion to see Ex. P1 Will and thus it would be clear that even without going through the testament she has written the document. Insofar as Exs. D2 and D3 were concerned, they were written respectively on 2-7-1984 and 1-6-1989, long prior to the testament in question and hence no importance can be attached to those documents, Ex. D4 does not contain either the date or the address to whom it was written.

19. Relying on a decision of the Apex Court reported in : (Indu Bala Bose v. Manindra Chandra Bose), the learned counsel would submit that the plaintiffs have not proved the testament as required by law; that there are number of suspicious circumstances surrounding the execution of the Will and when such suspicious circumstances were available, a duty is cast upon the propounders to dispell those suspicious circumstances and in the instant case, the plaintiff's have thoroughly failed to do so and hence their request has to be rejected. The Supreme Court in the decision cited above has held as follows :

'The mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a will by Section 63 of the Succession Act. The onus of proving the Will is on the pro-pounder 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 before the Court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations. 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.'

From the above decision it would be very clear that 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. In the instant case, it remains to be stated that there are no suspicious circumstances at all. It has to be further stated that the execution and attestation of the Will have been duly proved and the suspicious circumstances did not exist. Thus after careful consideration and careful scrutiny of the evidence available, both oral and documentary, the Court is of the view that the plaintiffs have proved that the testatrix in a sound and disposing state of mind has executed Ex. P-1 testament wherein she has cancelled the two earlier Wills.

There is nothing unnatural in the disposition made in Ex. P-1 Will. There is compelling reason which led the testatrix to execute the third Will under Ex. P-1. While the plaintiffs by putting forth sufficient and acceptable evidence have proved the due execution, attestation and registration of the document, the defendant has miserably failed to prove that any deception was practised on the testatrix for procuring Ex. P-1 testament. Under the aforesaid circumstances, it has to be necessarily held that the plaintiffs have properly proved the execution and attestation of Ex. P-1 Will as required by law; that Ex. P-1 is true, valid and binding on the parties and that the plaintiffs are entitled for the issue of probate as asked for.

20. In the result, this suit is decreed as prayed for. Issue probate. Considering the relationship between the parties, there will be no order to the costs.

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