

K.S. Krishnakumar and ors. Vs. C.D. Suresh Kumar and ors.

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Court : Chennai

Decided On : Mar-15-2001

Reported in : AIR2001Mad279

Judge : M. Chockalingam, J.

Acts : [Succession Act, 1925](#) - Sections 218

Appeal No. : T.O.S. No. 9 of 1991

Appellant : K.S. Krishnakumar and ors.

Respondent : C.D. Suresh Kumar and ors.

Advocate for Def. : V. Lakshmi Narayanan, Adv. for ;V. Raghavachari, Adv.

Advocate for Pet/Ap. : C.P. Sivamohan, 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 dated 22-5-1986 of Jagadambal.

2. Plaintiff's averments are as follows : The deceased Jagadambal died on 30-11-1986 at No, 59, Bazar Road, Villivakkam, Madras 600 049. The last Will and

Testament of the said Jagadambala was duly executed by her in the presence of the witnesses on 22-5-1986 and the same was registered, in the Office of the Sub-Registrar, Ambattur. The first plaintiff along with his cousin. C.D. Ravikumar were named as executors of the said Will. The said Will was written and registered with the knowledge of the relatives of Jagadambal. The executors have informed the beneficiaries about the contents of the Will through an Advocate letter dated 20-1-1987. There was misunderstanding among family members of the plaintiffs and of the C.D. Ravikunjar. C. D. Ravikumar relinquished his right as executor after making wild allegations against the plaintiffs by legal notice dated 15-6-1987. A reply was sent by the plaintiffs on 24-7-1987. C.D. Sureshkumar brother of C.D. Ravikumar filed a suit in O.S. 6011/87 before the City Civil Court, Madras for bare injunction against the first plaintiff alleging that part of one of the items covered under the Will is an ancestral property, for which he is a co-owner. There are legal heirs and beneficiaries of the deceased Jagadambal numbering 24, as mentioned in the plaint. The daughters of the deceased Jagadambal viz. Smt. Amirthavalli, Smt. Vatachala and Smt. Jothi gave consent affidavits for granting probate in favour of the plaintiffs. The male heirs are now attempting to deprive the female heirs to take share in the properties of Jagadambal by virtue of the Will. The true copies of the letter dated 20-1-1987 written by the two executors have been filed. Likewise the legal notice dated 15-6-1987 and the reply dated 24-7-1987 have also been filed. C.S. Sampathkumar, first son of Jagadambal has set up his third son-in-law K. Damodaran to file a suit in O.S . 3669/86 for specific performance before the City Court Madras in respect of S. No. 276/1. Hence the suit.

3. The defendants filed a written statement alleging that the competence of Jagadambal to execute a Will in respect of the properties that belonged to the defendants is denied. The properties are ancestral properties of the defendants. C.N. Subramania Mudaliar himself had treated the property as ancestral one. Jagadambal had no independent means to purchase the property and had wholly depended on her husband. Subramania Mudaliar continued to enjoy the property as ancestral along with defendants and Doraivelu, father of the 4th defendant. After the death of Doraivelu, the property was jointly managed, by the male heirs of Suibramania Mudaliar. The female heir including the said Jagadambal do not have any iota of title in and over the property belonging to the defendants. The Will

is a fabricated document and is obtained by playing fraud. The attesting witnesses viz. Kumar and Sivanandam are very close friends of the plaintiff. There is variation in the signature of Jagadambal in the Will and she could not have signed as she was totally blind. Their sisters together with the plaintiffs had played fraud on the Registrar and had impersonated someone for Jagadambal. In the suit in C.S. 912/93, filed by the plaintiffs along with her sisters, she had clearly stated that the Will is a fabricated one and that alone prompted them to institute the proceedings for partition. Hence the suit may be dismissed with exemplary costs.

4. The following issues were framed :

(1) Was not executant Jagadambal competent enough to execute the 'Will' dated 22-5-1986 ?

(2) Is not the 'Will' dated 22-5-1986 valid and enforceable in the eye of Law ?

(3) Should not the claim of the defendants that the 'Will' is a forged one be rejected ?

(4) Are not the properties referred to in the 'Will' belong to the executant Jagadambal absolutely and not ancestral ?

(5) Should not the suit be decreed as prayed for ?

5. ISSUES 1 to 5 :-- The plaintiffs have filed the suit for issue of probate alleging that their grandmother Jagadambal executed her Last Will and Testament on 22-5-1986.

6. The first plaintiff examined himself as PW 1. His grandmother Jagadambal died on 30-11-1986 and she executed a Will on 22-5-1986. Ex P1 is the death certificate of the said Jagadambal. Ex. P2 is the Will executed by Jagadambal. Kumar and Sivanandam are the attesting witnesses, who are their family friends. Jagadambal went to the Sub-Registrar's Office for registration. His father K. E. Shanmugam and his sister K.E., Santhi alias Mohanavalli have signed as witness before the Sub-Registrar. The signature found in the Will is that of Jagadambal. Himself and C. D. Ravikumar were appointed as executors. Jagadambal got four

sons and three daughters viz. C. S. Sampathkumar, C. S. Duraivelu, C.S. Sivaprakasam, C. S. Sarvavanan, Amithavalli wife of K. E. Shanmugam, J. Vatsala wife of N. K. Jeevarathinam and H. Jothi wife of Harikrishnan. The properties covered under the Will are (1) door Nos. 42 to 50 Bajar Street, Villivakkam, Chennai 49; (2) door Nos. 49 to 57, Red Hills Road, Villivakkam, Chennai, (3) Door No. 21, 5th Street, Villivakkam, Chennai and (4) Pallam of an extent of 0.35 cents in Villivakkam Village bearing Survey No. 276/1. Jagadambal purchased these properties out of her own money. His grandfather settled his properties during his lifetime in favour of his four sons. He did not settle any property in favour of any of his daughters. Defendants 1 and 2, Nandakumar, Balakumar, Ravikumar, Rameshkumar, Amirthavalli, Udayakumar, Vatsala, Jothi, Sankar Harikrishnan and Mukesh Kumar have given consent affidavits under Exs. P3 to P16. Jagadambal was in good health at the time of execution of the Will. She had good eye sight. Property was a self-acquired property. Suit in C.S. 912/93 for partition was filed by Amirthavalli and her two sisters after the O.P. was filed. Ex. P16 is the sale deed pertaining to item No. 1 in the Will property. Ex.P17 is another sale deed of item Nos. 2, 3 and 4 of the Will property. The signature of the testatrix in the simple mortgage deed dated 7-1-1966 identified by him is marked as Ex. P18. Ex. P19 is the certificate to show that the mortgage loan was discharged by the plaintiff. Copies of Income-tax deductions certificate are marked as Ex. P20. Ex. P21 is the revocation deed of the power of attorney given by the testatrix in favour of Sivaprakasam. Plaintiff is one of the attesting witnesses. Both the executors have attested Ex. P21. Certificate copy of the plaint in O.S. 6011/87 is marked as Ex. P22. Ex. P23 is the certified copy of the deposition of the 3rd defendant herein in that suit. The copy of the judgment and decree in O.S. No. 6011/87 are marked as Exs. P24 and P25 respectively. Ex.P26 is the incomplete family arrangement deed.

7. One of the attesting witnesses Sivanandam was examined as PW 2. His evidence is that the first attesting witness is Mr. Kumar, a family friend of Jagadambal. Signatures found in each page at the bottom of Ex.P2 are that of Jagadambal. She signed in the presence of both of the attesting witnesses. The testatrix was in sound state of mind while signing the Will and had good eye sight at the time of execution. He signed as attesting witness.

8. The first defendant was examined as PW 3. He would depose that Jagadambal is his grandmother. She died at 49, Bazaar Street. She owned the Will property which was purchased by her, by selling her jewels. She has executed a Will. He came to know about the same through his family friends Kumar and Sivanandam. They told him that his grandmother had bequeathed more properties to him and lesser properties to his aunts. The first plaintiff is the son of his father's elder sister Amirthavalli. He also filed consent affidavit under Ex.P3. The reason why he had submitted Ex.P3 consent affidavit was because he would be getting more properties through the Will.

9. Mr. P. Rajamanickam, an Advocate was examined as PW 4. He would state that he knew Jagadambal through one Mr. Jeevarathina Mudaliar, a former Court Officer in the High Court. The signatures found in each page of Ex.P2 Will are that of Jagadambal. It was he who drafted the Will. One week prior to the date of Ex.P2 Will he had been to her house whereat she gave instructions regarding the disposal of the properties at Bazaar Street and Red Hills Road to her grandsons born both to her sons and daughters. He took down the same and prepared the draft Will and got it typed and took it to her house on 22-5-1986 where she executed the said Will. On 22-5-1986, along with her one Krishnakumar, her grandson and also one Kumar her relative were present in the house. His Junior Martin Arockiaraj and himself went to Jagadambal's house. As he was about to read it out, Sivanandam one of the attesting witnesses came inside. Thereafter, he read out the contents of the Will to the testatrix and she was fully satisfied that it was in accordance with her instructions. At the time of execution of the Will, the said Jagadambal's hands were shaking as she was a very aged lady. Otherwise she was of sound health and of sharp mind. Ex. P21 revocation deed was also drafted by him one year prior to the execution of the Will. He sent it through his Junior Martin Arockiaraj, who signed in Ex. P21. The signature found in Ex.P 21 is that of Jagadambal.

10. The sixth defendant examined himself as DW 1. His evidence is that he has seen his grandmother's handwriting. She was living with all her four children till her lifetime. The plaintiffs or the daughters did not look after his grandmother. The signatures found in Ex.P2 are not that of his grandmother. He knew the signature

of his grandmother. She had not given any power of attorney to manage the property to anybody. His father died in the year 1996. Ravikumar who was appointed as one of the executors of the Will is not alive. He died during the course of the trial. The document in Ex.D5 was with his father. The original of Ex. D5 is with him.

11. Advancing the arguments for the plaintiffs, the learned counsel would submit that the plaintiffs originally filed a petition for issue of probate in respect of the last will and testament executed by Jagadambal on 22-5-1986 and on objection by the defendants subsequently it was converted into suit; that the said will was the last will and testament executed by the testatrix in a sound and disposing state of mind, that her health was all right at the time of execution of the Will; that the will is marked as Ex.P2; that the Will was prepared by PW 4 Mr. Rajamanickam, a practising Advocate of the High Court, that the said witness was also present at the time of execution, that the testament was attested by Kumar and Sivandam, that one of the attesting witnesses Sivanandam is examined as PW 2 who has categorically deposed as to the proper execution and attestation of the testament, that Jagadambal had four sons and three daughters that her husband predeceased her, that during his lifetime he settled his properties in favour of his four sons, that Exs. P16 and P17 are the two sale deeds executed in respect of the properties found in the testament in favour of Jagadambal, that she had four immovable self-acquired properties in the city of Madras as shown in the testimony, that Jagadambal was maintaining good health and was having good eye sight at the time of execution of the Will; that the testatrix has clearly stated the reasons for making the bequeath and that she has bequeathed the properties in favour of all her grand sons both through her sons and daughters; that the testament was duly registered on 26-5-86 at the Sub-Registrar's Office that at the time of registration Jagadambal was identified by P.W. 1's father Shanmugam and his sister Santhi alias Mohanavalli, who signed as witness before the Sub-Registrar; that P.W. 1 and Ravikumar have been appointed as executors under the Will; that Ravikumar died during the pendency of the proceedings and hence he could not be examined; that the defendants 1 and 2, Nandakumar, Balakumar, Ravikumar. Rameshkumar, Amirthavalli, Udayakumar, Vatsala, Jothi, Sankar, Hari Krishnan and Mukesh Kumar have given consent affidavits which have been

marked as Exs. P3 to P16; that Exs. P3 to P16 would also indicate the truth and genuineness of the Will; that Amirthavalli and her two sisters filed a partition suit in C.S. 912/93 after this On was filed seeking for partition since there was a delay in getting the will probated; that Ex. P18 is a simple mortgage deed executed by the testatrix on 7-1-66 where her signature is found; that Ex. P19 is the certificate to show the discharge of the mortgage; that Ex. P20 is the copy of the income-tax deductions certificate and Ex. P21 is the revocation deed of the power of attorney given by the testatrix in favour of Sivaprakasam. which bears the signature of the testatrix; that both the executors have attested Ex. P21; that Ex. P22 is the certified copy of the plaint in O.S. 6011 /87 filed by the first defendant. Added further the learned counsel that the first defendant though has filed a statement challenging the Will, has been examined by the plaintiffs' side and he has categorically deposed that the Will is a true and genuine document; that the contesting defendants clearly knew that the said Jagadambal executed the testament distributing her immovable properties to all her grand sons; that the contesting defendants despite the same have come with the false defence stating that the document is a fabricated, obtained by fraud and it is a forged one; that the contesting defendants have not examined either D2 or D3 but have examined D.W.1 who was a minor at the time of execution of the testament and he was also competent to speak about the fact and apart from that a scrutiny of his evidence would clearly show that he has suppressed the real facts and has given the false evidence by stating that Jagadambal was in the habit of affixing her thumb impression and thus the defendants have failed to prove that the will was obtained under under influence and it is a forged document, but the plaintiffs have proved the proper execution, attestation and registration of Ex. P2 testament as required by law and hence probate has got to be issued.

12. Strongly opposing all the above contentions of the plaintiffs' side, the learned counsel appearing for the defendant with vigour and vehemence would submit that Ex. P2 testament was not one executed by Jagadambal; that she lost her vision at the relevant point of time and she did not possess physical and mental faculties to execute the Will and she was not possessed of good and sound disposing state of mind at the time of the alleged execution of the Will; that the Will was obtained by fraud and undue influence; that a comparison of the signature found in Ex. P2 and

in particular Ex. P21 revocation deed would clearly reveal that the signatures found in Ex. P2 were not that of Jagadambal; that though there are two attesting witnesses found in Ex. P2, the plaintiffs have chosen to examine P.W. 2 one Sivanandam a Kalasi in the I.C.F. but they have not examined the other attesting witness Mr. Kumar; that when there were suspicious circumstances, a duty is cast upon the plaintiffs to examine the other attesting witness also; that the plaintiffs did not examine the co-executor under Ex. P2; that the explanation given by the plaintiffs' side that the co-executor should not be examined since he is dead should not be accepted for the reason that the plaintiffs could have examined him even before his death in 1995; that the evidence of P.W. 4 an Advocate has to be rejected by the Court for the reason that there is nothing to indicate in Ex. P2 testament that, it was drafted by him or he had got any connection in the preparation of the Will; that though it is admitted by P.W. 4 that his Junior Martin Arockiaraj was also with him and he is also a practising lawyer, he has not been examined by the plaintiffs' side for the reasons best known to them; that the contesting defendants have examined D.W. 1 who could well speak to the fact that the signatures found in Ex. P2 were not that of his grandmother Jagadambal; that the Court should reject the evidence of P.W. 3 for the simple reason that he originally filed a written statement stating that the testament was a fabricated document and one obtained by playing fraud on her and now he would depose that the said document is a genuine one; that the plaintiffs should not be permitted to rely on Ex. P7 consent affidavit of the said Revikumar, the younger brother of P.W. 3 since the defendants have filed Ex. D6 a sworn affidavit of Ravikumar stating that Ex. P2 was not duly executed by Jagadambal but obtained by fraud and undue influence and that Jagadambal could not have executed such a document disinheriting and excluding all her sons and daughters; that the first defendant himself has filed a suit as evidenced by Ex. P22 wherein he has pleaded that one of the items of the immovable properties found in Ex. P2 Will was an ancestral property; that all the daughters of Jagadambal have filed a suit for partition wherein they have denied the execution of the Will by Jagadambal and thus the plaintiffs have not proved the due execution and attestation and registration of the document, but on the contrary the defendants by necessary evidence have proved that Ex. P2 testament has come into existence by

exercising undue influence and fraud and it is also a forged one and hence the suit has got to be dismissed.

13. The plaintiffs have sought for the issue of probate alleging that their grandmother Jagadambal who died on 30-11-1986, executed Ex. P2 last will and testament in favour of her grandsons through daughters and sons. The contesting defendant have objected to the request of the plaintiffs' on the ground that the said Will was not executed by Jagadambal as it is a forged document. Admittedly Jagadambal had four sons viz. Sampathkumar, Duraivelu, Sivaprakasam and Saravanan and three daughters viz. Amirthavalli, Vatsala and Jothi. Jagadambal owned four items of immovable properties situated in (1) door Nos. 42 to 50 Bazaar Street, Villivakkam, Madras; (2) door Nos. 49 to 57, Red Hills Road, Villivakkam, Madras; (3) door No. 21, V Street, Villivakkam, Madras and (4) Pallam of 0.35 cents in Survey No. 276/1 of Villivakkam Village. Except those items of immovable properties Jagadambal did not own any immovable or movable properties at the time of execution of the Will. She died on 30-11-1986. The contention of the plaintiffs' side that the husband of Jagadambal had properties of his own and he settled the properties during his lifetime itself in favour of his four sons is not disputed by the contesting defendants. In order to prove Ex. P2 testament, the first plaintiff examined himself as P.W. 1 and they have also examined P.W. 2 Sivanandam one of the attesting witnesses and P.W. 4 Mr. Rajamanickam, an Advocate, who prepared Ex. P2 testament. According to the plaintiffs, Ex. P2 testament was executed by his grandmother Jagadambal on 22-5-86. P.W. 2 Sivanandam and one Kumar were the attesting witnesses and they were their family friends. Ex. P2 was registered at Ambattur Sub-Registrar's Office. Jagadambal went to the Sub-Registrar's Office for registration and at the time of registration his father Shanmugam and his sister Santhi alias Mohananvalli have signed as the witnesses before the Sub-Registrar. The signature found in Ex. P2 Will is that of his grandmother Jagadambal. Himself and Ravikumar are appointed as executors under Ex. P2 Will. The defendants 1 and 2, Nandakumar, Ravikumar, Rameshkumar, Amirthavalli, Udayakumar, Vatsala, Jothi, Sankar, Harikrishnan and Mukesh Kumar have given consent affidavits which are filed as Exs. P3 to P16. Jagadambal was in good health and had a good eye sight at the time of execution and she was in a sound state of mind.

14. A perusal of Ex. P2 testament would show that the signature of the testatrix was attested by Kumar and Sivanandam. Of the two attesting witnesses, Mr. Sivanandam is examined as P.W. 2. He has categorically deposed that the testatrix signed the testament in his presence and the other attesting witness and he signed in their presence; that he as the second attesting witness signed in the testament, while the first attesting witness was Mr. Kumar, a family friend Jagadambal; that the signatures found in Ex. P2 each page were that of Jagadambal; that she signed in the presence of both the attesting witnesses; that the first attesting witnesses signed before him and he signed after him; that the testatrix was in sound state of mind while signing the Will and she had good eye sight; that it is not true to say that the testatrix was blind at that time; that on the day of execution even before he went to the house of the testatrix, Jagadambal, Kumar, Advocate and another person were present; that he did not the Advocate previously; that he came to know that he was an advocate because when he enquired whom he was; that the testatrix told him that he was an advocate; that he was requested by Jagadambal to sign the Will; and he did not know when Jagadambal went to the Registrar's Office. Despite lengthy cross-examination his evidence as to the execution of the document by Jagadambal and attestation by himself and the other witness Kumar is in no way shaken. The contention of the defendants' side that he was only a Kalasi in ICF in 1986 and that Shanmugam was also working in ICF and hence his evidence has got to be taken as interested testimony cannot be accepted. It is pertinent to note that he is not related to neither the testatrix nor any one of the members of her family but he was well acquainted with the testatrix and the family members also. The contesting defendants are unable to show any strong or valid reason or circumstance to disbelieve the evidence of the said attesting witness.

15. Apart from the attesting witness, the plaintiffs have examined P.W. 4 Advocate Mr. Rajarnanickam, who has drafted the Will. According to the witness, he is an advocate practising in the High Court; that he was acquainted with Jagadambal whom he knew through one Jeevarathina Mudaliar a former Court officer in the High Court; that on his request P.W. 4 met Jagadambal at his house; that one week prior to the date of Ex. P2 he went to her house; that she gave instructions regarding the disposal of her various properties at Bazaar Street and Red Hills

Road to all her grandsons born both to her sons and daughters; that he took down the instructions and subsequently prepared the draft will, got it typed and took it to her house on 22-5-86 along with his junior Martin Arockiaraj; that Krishnakumar her grandson, one Kumar her relative were present at that time along with the testatrix; that he handed over the Will to Jagadambal; that she glanced through the will and requested him to read it out to her; that when he was about to read, one of the attesting witnesses Sivanandam came inside; that thereafter he read out the entire contents of the will and the testatrix heard the same and she was fully satisfied that it was in accordance with her instructions and subsequently she executed the Will and at the time of the execution of the Will, his junior, himself and the said Kumar and Sivanandam were also present; that at the time of the execution of Will Jagadambal's hands were shaking as she was very old and otherwise she was of sound health and of sharp mind; that he told the testatrix that the will need not be registered and if she desired to do so she might do so at any time. The witness has also added that he could identify the signature of Jagadambal in the revocation deed under Ex. P21 and the same was also drafted by him one year prior to the execution of the Will and that he sent it through his junior Martin Arociaraj and hence he has signed in Ex. P21 revocation deed; that the signatures found in Ex. P21 is that of Jagadambal.

16. P.W. 4 an Advocate practising in the High Court for a few decades has given the evidence as above narrated that even prior to the execution of Ex. P2 he had long acquaintance with Jagadambal and it was he who drafted the revocation deed Ex. P21 even one year prior to the execution of Ex. P2; that it was at the instructions of Jagadambal at her house he drafted the Will, got it typed and took the same to her house, read it out and Jagadambal after fully satisfying herself that the testament was in accordance with her instructions, she executed the same in the presence of himself. and his junior and two other witnesses have also attested the same. There is nothing to suspect the evidence of the said P.W. 4 advocate who has categorically depose as to the instructions, preparation of the Will, execution of the same by the testatrix and which was followed by the attestation by the two attesting witnesses. His evidence is cogent, natural and acceptable. The learned counsel appearing for the defendants brought to the notice of the Court that there is nothing available under Ex. P2 that it was P.W. 4

who drafted or prepared Ex. P2 Will. P.W. 4 himself has categorically admitted that except his evidence before the Court that he drafted the same on instructions of the said Jagadambal, nothing is found in the document. True it is that nowhere it is indicated that the said testament was prepared by P.W. 4. But a careful scrutiny of the evidence of P.W. 4 would show that it inspires the confidence of the Court, though it is not stated in the testament that it was he who prepared the same. It is pertinent to note that P.W. 4 who was well acquainted to the testatrix even prior to the preparation of Ex. P2 and who had occasion to draft a revocation deed as found under Ex. P21 is neither a relative of the testatrix nor a beneficiary under the Will. The defendants are unable to show how and in what way P.W. 4 is interested or benefitted by propounding of the Will or in any one of the beneficiaries under the Will.

17. Admittedly Jagadambal the testatrix had four sons viz. Sampathkumar, Duraivelu, Sivaprakasam and Saravanan. Out of the said four sons Sampathkumar, Sivaprakasam and Saravanan are shown as defendants 2, 3 and 4, respectively. The second son of Jagadambal by name Duraivelu died in the year 1973, leaving behind him Suresh Kumar, the first defendant herein Ravikumar, the co-executor in the testament, Rameshkumar and Mukeshkumar. During the pendency of the proceedings, the 4th defendant Saravanan died and his legal heirs have been added as defendants 5 and 6. It is also admitted that Jagadambal had three daughters viz. Amirthavalli, who died in 1987, Vatsala, who died in 1992 and another daughter Jothi. The first son of the said Amirthavalli viz. Krishnakumar is the first plaintiff herein. Vatsala left no male issues. The third daughter of the testatrix viz. Jothi left behind her two sons Sankar and Mukesh Kumar alias Murugavel who are the second and third plaintiffs in the suit. The testatrix has made a explicit in the testament that except the aforementioned 4 items of immovable properties, she had no other movables or immovable properties and no other jewellery or vessels or bank balance or cash on hand. She has also pointed out that her husband has also bequeathed his property situated under door No. 51 Bazaar Road, Villivakkam to her four sons. The testatrix has made the disposition in respect of the above four immovable properties as follows :

[Vernacular matter omitted]

Thus it would be very clear that the testatrix has distributed all her four immovable properties to all the male children of her sons and daughters. It is pertinent to note that she has not bequeathed any property to her sons and daughters. She had made mention in the testament that her husband has bequeathed his property in favour of her sons. It is not a case where she has excluded her male grand children either through sons or through daughters, but she has distributed the property to all the male grand children through both sons and daughters without excluding anybody. This would be indicative of the fact that the testatrix intended to distribute the property among the male born of her sons and daughters. Hence the contention of the contesting defendants that the testatrix would not have executed such a testament disinheriting her sons and daughters cannot be countenanced.

18. Ex. P1 was executed on 22-5-1986 and it was registered on 26-5-86. The testatrix has died after a period of six months i.e. on 30-11-86. It remains to be stated that the testatrix had four sons and three daughters and number of grown up grand children and hence it cannot be stated that the execution of the Will by the testatrix was not known to other family members. Though the testatrix had lived for six months, she had neither revoked nor cancelled the testament. Exs. P3 to P15 are the consent affidavits given by the defendants 1, 2, Nandakumar, Balakumar, Ravikumar, Rameshkumar, Amirthavalli, Udayakumar, Vatsala, Jothi, Sankar, Hari Krishnan and Mukeshkumar who are heirs of the testatrix. Those heirs of the testatrix totalling 13 persons have given consent affidavit as found in Exs. P3 to P15 stating that they have no objection for the issuance of the probate as asked for by the plaintiffs, which would clearly point to the knowledge of the members of the family as to the execution of the will and truth and genuineness of the same also. It has to be pointed out that as heirs those persons would be also entitled to share along with others, if the property of Jagadambal is to devolve upon the heirs by operation of law. But they have given consent affidavit.

19. The first contention of the defendants' side that the properties are ancestral property of the defendants and Jagadambal had only subscribed her name to one

of the items of the properties and in fact her husband Subramania Mudaliar had himself treated the property as ancestral property and the Jagadambal had no independent means to purchase the property cannot be considered or countenanced for the simple reason that all these questions do not arise for consideration in this proceedings since the scope of the suit would be to decide the truth and genuineness of Ex. P2 only. The next contention of the defendants' side is that Ex. P2 Will is a fabricated document and it has been obtained by playing fraud; that the testatrix factually could not have signed as she was totally blind and had lost the usage of her faculties at the time of execution of the will and thus it is a forged document. After careful consideration and scrutiny of the evidence available, the Court has to necessarily negative this contention. As stated above, apart from P.W. 1 one of the propounders, P.W. 2, an attesting witness and P.W. 4 an advocate who prepared and who was present at the time of execution of the Will have clearly spoken to the fact that she was in a good and disposing state of mind and she would have good eye sight also. Except the assertion of the contesting defendants, that she was not possessed of good health, faculty, eye sight and disposing state of mind, no material or proof is available in the whole evidence adduced before the Court. The learned counsel for the defendants with vigour and vehemence would contend that a comparison of Ex. P2 and the revocation deed under Ex. P21 would clearly show the variation in the signature of Jagadambal and it would be pointing to the forged nature of the document. A comparison of Ex. P2 the original testament dt. 22-5-86 and Ex. P21 revocation deed dated 6-5-85 and in particular comparison of the signatures found in the reverse of the first page of both the documents would clearly indicate that both the documents bear the signature of the same person viz. Jagadambal. It is pertinent to note that both the documents were registered wherein the testatrix was properly identified by the two witnesses. Apart from P.W. 1 who could identify the signature of his grandmother. P.W. 2 as attesting witness has identified the signature of the testatrix in all the four pages of Ex. P2 Will. P.W. 4 Mr. Rajamanickam, an Advocate who prepared the Will and who was also present at the time of execution of the Will has categorically deposed that Ex. P2 is the Will executed by the said Jagadambal and the signatures found in each page of Ex. P2 are that of Jagadambal.

20. The contesting defendants made a feeble attempt through the evidence of D. W. 1 who has stated in the cross-examination that his grandmother was in the habit of affixing the thumb impression and did not sign; that he knew about the same because his grandmother had affixed the thumb impression in the documents filed in the City Civil Court. The said witness who was a minor then has deposed during the chief examination that he has seen his grandmother's handwriting and the signatures found in Ex. P2 were not that of his grandmother and he knew the signature of his grandmother. This inconsistent testimony of the said witness would clearly point to the falsity of his evidence, The defendants have not pleaded in the written statement that Jagadambal was not in the habit of setting her signature, but in the habit of affixing her thumb impression. It is true that in the signatures of the testatrix found in Ex. P2 there is some difference from page to page. But it has to be borne in mind that at the time of the execution of the Will, the testatrix was nearing 80 and hence her hands would have been shaky. Taking into consideration that the testatrix was an old woman aged nearing 80 years, the slight variation in the signatures found in the different pages of the document need not be given much importance in the face of the sufficient and satisfactory evidence to the fact of execution of the document by the testatrix. Thus the Court has to necessarily reject the contention of the defendants' side that the document is a forged one.

21. The next contention of the defendants that the testament has come into existence under undue influence cannot also be accepted for the reason that in a case like this where the contesting party comes with a defence stating that the testament is a forged one or obtained by fraud or undue influence, the burden rests upon him to establish the circumstances which show that the testament had been obtained by fraud or undue influence or a forged one. But the Court may hasten to say that the contesting defendants have not discharged the said burden in any way, though they have pleaded and made feeble attempt as stated above. The learned counsel for the defendants much commented upon the non-examination of Ravikumar whose consent affidavit has been filed by the plaintiffs' side as Ex. P7. Pointing to Ex. D6, a sworn affidavit alleged to have been executed by Ravikumar on 5-2-87, the learned counsel for the defendants would urge that the said Ravikumar has categorically spoken to the fact that the said will

was a forged one and thus it would be clear that the plaintiffs have relied upon Ex. P7 a consent affidavit and the defendants have relied upon Ex. D6 a sworn affidavit by the same person. Under the circumstances, the contents of which affidavit are true cannot be made known unless and until the said Ravikumar is examined. But it is brought to the notice of the Court that during the trial the said Ravikumar has died and hence he could not be examined by the plaintiffs' side. Therefore, the Court is of the view that much importance cannot be attached either to Ex. P7 or Ex. D6 in the absence of his evidence.

22. The learned counsel appearing for the plaintiffs laid emphasis on the evidence of P.W. 3 who is ranked as the first defendant herein. The first defendant as the witness for the plaintiffs has deposed that Ex. P2 is a true and genuine document and on the assurance that he would be given properties more than what is found in Ex. P2, he originally contested the proceedings and now due to his pricking conscience he is speaking the truth that the Will is a true and genuine one. The learned counsel for the defendants brought to the notice of the Court that the first defendant filed O.S. 6011 of 1987 wherein he has averred in the plaint that door Nos. 48, 49 and 50 Bazaar Street, Villivakkam is his ancestral property; that he was entitled to a share and he sought for a permanent injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of the property, and has also filed a written statement in this proceedings stating that the Will is a fabricated document and hence his evidence has to be rejected. The Court has to entirely agree with the contention of the defendants' side since P.W. 3 Suresh Kumar has filed a suit in the City Civil Court stating that one of the properties found in the Will was an ancestral property and since he has subsequently filed a written statement in this suit stating that the Will is a fabricated document and it has been obtained by playing fraud and subsequently now emerging as a witness for the plaintiffs to state that the Will is a true and genuine document. The Court is of the considered view that the evidence of P.W. 3 is untrustworthy and not reliable and hence the testimony of P.W. 3 is of no consequence. It is admitted that the daughters of Jagadambal have filed a suit for partition in respect of the subject matter of the testament subsequent to the initiation of this proceedings seeking for probate.

23. The Apex Court in the decision reported in : [1982]1SCR1188 (Indu Bala Bose v. Manindra Chandra Bose) held as follows (Paras 7 & 8) :

'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 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 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.'

Applying the above test given by the Supreme Court, the Court has to necessarily hold that in the instant case, not even one suspicious circumstance is available. A careful scrutiny of the available evidence would lead to the irresistible conclusion

that Ex. P2 Will is a genuine one, properly executed by the testatrix in a sound disposing state of mind and it was duly attested by the two witnesses including P.W. 2 as required by law and on the contrary, the contesting defendants have miserably failed to prove that Ex. P2 is a forged document or obtained under undue influence or by playing fraud on the testatrix. Therefore, the plaintiffs are entitled for the relief of probate. Issue No. 4 does not arise for consideration in this suit, since the scope of this suit is only in respect of the truth and genuineness of the testament under challenge. Issue Nos. 1 to 3 and 5 are answered accordingly,

24. In the result, this suit is decreed with costs. Issue probate in favour of the plaintiffs.

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