

HIGH COURT OF KARNATAKA**Bench: The Hon'ble Mrs. Justice K.S. Mudagal and The Hon'ble
Mr. Justice C.M. Joshi****Date: 23rd January, 2024**

REGULAR FIRST APPEAL NO. 134 OF 2013 (DEC)

Parties Involved:

**Smt. M.S. Komala, Sri Girish M S @ M S Ramesh, Smt. T
Jayalakshmi Shivaprakash (Appellants)****Vs****Sri M.N. Srinivasan, Smt. M N Janaki, Smt. M N Jayalakshmi, Smt.
M N Rajeshwari, Smt M N Lalitha, Sri M N Venkatesh, Miss Geetha,
Miss Neetha, Miss Deepika (Respondents)****Legislation and Rules:**

Sections 63 and 68 of the Indian Evidence Act

Order XL Rules 1, 2, 3, and 4 of the CPC

Karnataka Stamp Rules, 1958

Subject: Challenge against the judgment dismissing the suit seeking declaration that the Will dated 27-01-1996 of M.N. Ranganathan is null and void, and declaring the Will dated 30-12-1992 as his last Will.**Headnotes:**

Validity of Wills – Dispute over the last will of M.N. Ranganathan. The trial court's dismissal of the suit contesting the will dated 27-01-1996 (Ex.D1) was challenged. The appellants asserted that the will dated 30-12-1992 (Ex.P11) was the valid last will of Ranganathan. [Paras 1, 3, 33-34, 43, 61-62]

Health Condition of Testator – Consideration of the testator’s health at the time of executing the wills. Evidence of medical treatment and mental state indicating he might not have been in a condition to execute the will dated 27-01-1996 (Ex.D1). [Paras 48, 50, 56, 58]

Suspicious Circumstances – Multiple suspicious circumstances surrounding Ex.D1, including inconsistencies in the testimonies of witnesses, the physical and mental state of the testator, and the manner in which Ex.D1 was found and registered. [Paras 43-44, 47-50, 52, 56-58]

Failure to Dispel Suspicions – Defendants failed to dispel the suspicions surrounding Ex.D1. The court found inconsistencies and unreliability in the evidence presented. [Paras 56, 59]

Admission of Earlier Will (Ex.P11) – Defendants’ admission of the will dated 30-12-1992 (Ex.P11) in their pleadings and the court’s finding that Ex.P11 was the last valid will of the testator. [Paras 61, 64]

Duties of Court Receiver – Directions regarding the duties of the Court Receiver, including handing over possession and documents to the plaintiffs and conducting an enquiry into the handling of the testator’s estate. [Paras 66-72]

Decision: Appeal allowed. The judgment of the trial court is set aside. The will dated 27-01-1996 (Ex.D1) declared null and void, and the will dated 30-12-1992 (Ex.P11) declared as the last valid will of M.N. Ranganathan. Directions issued to the Court Receiver.

Referred Cases:

H. Venkatachala Iyengar v. B.N. Thimmajamma – Principles of proving a will and addressing suspicious circumstances.

Dhani Ram (dead) through his LRs v. Shiv Singh – Requirement of reliable evidence to establish a will.

Representing Advocates:

For Appellants: Sri Chaitanya Hegde

For Respondents: Sri G R Mohan for R1-R9; Sri R Shivaprasad,
Advocate (appointed as Receiver)

JUDGMENT

Being aggrieved by the judgment and decree in OS No.3257/1997 dated 14-08-2012, passed by the VIII Additional City Civil and Sessions Judge (CCH 15) Bangalore, whereby the suit of the plaintiffs was dismissed, the plaintiffs have approached this Court in appeal.

2. The parties would be referred to as per their ranks before the trial Court for the sake of convenience.

3. The brief facts of the case are as below:

- (A) The plaintiffs approached the trial Court seeking the relief of declaration that the Will dated 23-01-1996 registered on 27-01-1996 in the office of the Sub-Registrar, Bangalore, as the Will of M.N.Ranganathan, is null and void and to declare that the Will dated 30-12-1992 executed by Sri M.N. Ranganathan, registered by the Sub-Registrar, Shivajinagar, Bangalore, is his last Will under which plaintiffs No. 1 and 2 have succeeded to the estate of deceased M.N. Ranganathan, in terms of the said Will. They also sought for such other consequential and appropriate reliefs.
- (B) The suit schedule property includes House bearing No.S-50, situated at KIRLOSKAR Colony, 3rd stage, Kamalanagar Main Road, Rajajinagar, Bangalore 560079 (hereinafter referred to as the House at Kamalanagar) and the other assets in the form of Fixed Deposits, Shares, Scooter bearing No.CAH 7196, the membership and the shares held by the testator M.N.

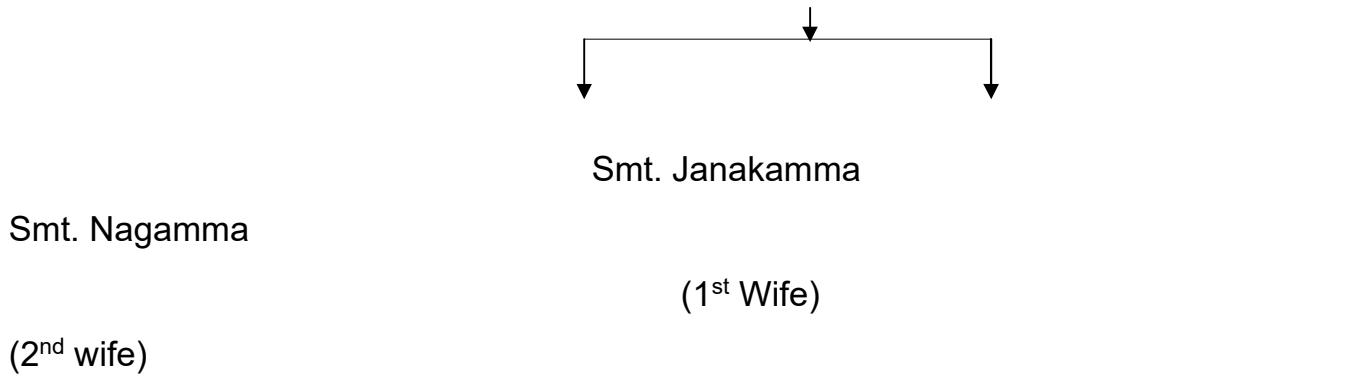
Ranganathan in Kirlosker Electric Company Employees Co-operative Society, the amounts in credit in his S.B. Accounts, etc., which are shown as Item No.2 to 5 and Schedule-C,D and E to the plaint.

(C) It is the case of the plaintiffs that defendant No.10 - M.N. Shivaprakash, defendant No. 1M.N.Srinivasan, testator M.N. Ranganathan and one Sarojamma are the children of late M.S. Narayana Gowda, from his first wife Janakamma; defendants No.2 to 6 are the children of late Sri M.S.Narayana Gowda from his second wife-Nagamma; defendants No. 7 and 8 are the daughters of defendant No.5, and defendant No.9 is the daughter of defendant No.6. Plaintiffs No.1 and 2 are the children and plaintiff No.3 is the widow of defendant No.10- Dr.M.N.Shivaprakash, who died during the pendency of the suit. The genealogical tree of the plaintiffs and defendants are as below:

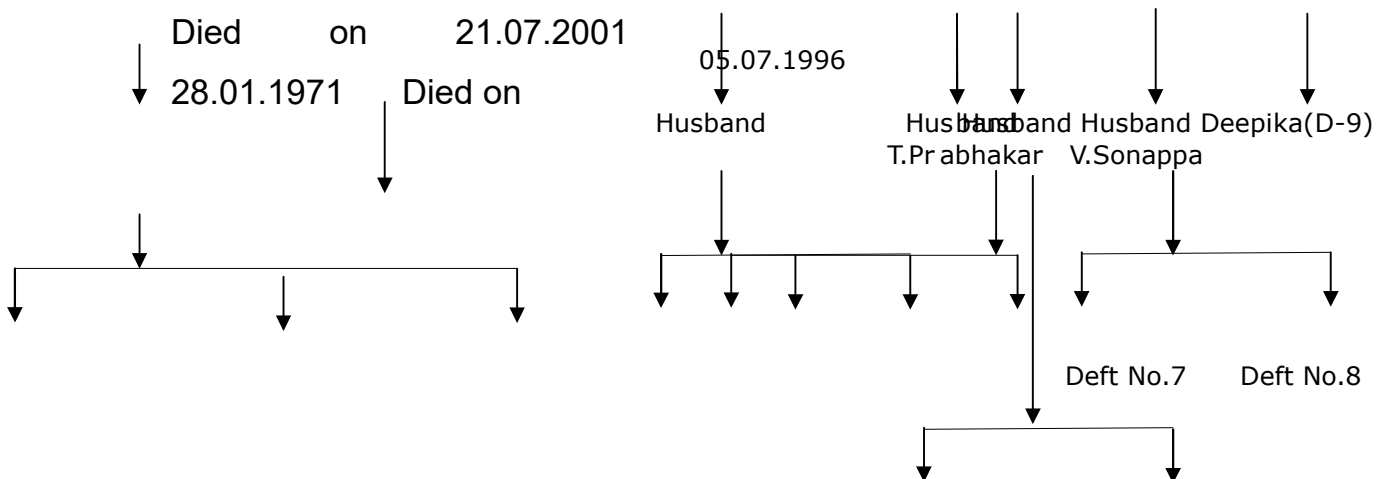
134/2013

FAMILY TREE

**M.S Narayana
Gowda Died on
28.03.1985 (Two
Wives)**



Dr. M.N Shivaprakash M.N Srinivas Sarojamma M.N Ranganathan M.N
Janaki M.N Vijayalakshmi M.N Rajeshwari M.N Lalitha N Venkatesh
(Defendant No.10) (Deft No.1) Died on Testator Deft No.2
Deft No.3 Deft No.4 Deft No.5 Deft No.6



Wife Miss Prithvi

T. Jayalakshmi (Daughter)

N.Venkatesh Muniswamy (Pltf No.3)

Born on 04.03.1977

Smt. Komal M.S Girish M.S Miss Beena M.S Shashikiran
Chandrashekhar Sowmya Shruthi Vijayashree Geetha Neetha
Pltf. No.1 Pltf. No.2 Died on 07.1986

Swaroop Shwetha

- (D) Plaintiffs stated that the testator i.e., M.N. Ranganathan was a divorcee without any issues and he was suffering from serious heart ailments since the age of his 23 years and in the year 1963 he had undergone Mitral Valvotomy and in the year 1992 he had undergone Mitral Valve replacement at the Hospital at Vellore. He was employed in M/s. Kirloskar Electric Company Limited and took voluntary retirement as Senior Engineer in the year 1993. He was staying alone in his house at Kamalanagar, Bangalore. It is stated that the testator M.N.Ranganathan, had married to one N.S. Sunanda Reddy in the year 1979 and later, there was a divorce between them by virtue of a decree of the Court in MC No.263/1981. The testator M.N.Ranganathan, had executed a registered Will dated 26-06-1981, (Ex.P2) bequeathing all his properties in favour of M.N.Shivaprakash, i.e., defendant No.10 and defendant No.1- M.N.Srinivasan. By that time, he was allotted the site by Kirloskar Electric Company Limited Employees Co-operative Society and after his divorce in MC No.263/1981, he remained single. Thereafter, the relationship of the testator M.N.Ranganathan strained with defendant No.1 and therefore, he revoked his earlier Will dated 26-06-1981 and executed another Will dated 01-03-1985 (Ex.P9) and registered the same before the Sub-Registrar, Gandhinagar, Bangalore, bequeathing all his properties in favour of his eldest brother M.N. Shivaprakash i.e., defendant No.10 and his children.
- (E) On 28-3-1985, father of the testator Sri M.S. Narayana Gowda died, leaving behind him a Will under which, a house in Ulsoor was bequeathed in favour of the testator and defendant No.1 jointly. Then, he constructed a house in his site at Kamalanagar and started residing there alone. Thereafter, when one of the daughter of defendant No.10 i.e., Shivaprakash died, and when there were certain additions to the properties, he executed another Will on 07-12-1991 (Ex.P10) and registered the same before the Sub-Registrar, Shivajinagar, and revoked all earlier Wills. In March, 1992, the testator who was already suffering with the heart and other ailments had to undergo 'mitral valve replacement'. All along it was plaintiff No.2 who was attending and accompanying the testator during the treatment and therefore, they were fond of each other. Plaintiff No.2 had stayed with the testator at Vellore for nearly three months and looked after him. Defendant No.10 Dr M.N.Shivaprakash, took voluntary retirement from his Government Job in 1992 and he went abroad with an intention to stay and practice there. The relationship between the testator and defendant No.1 got strained again.

(F) Since the brother of testator Sri M.N.Shivaprakash-defendant No.10 left India, there was a need for modification of the earlier Will executed by the testator M.N.Ranganathan. Therefore, he again, executed the last Will dated 30-12-1992 (Ex.P11) and revoked all his earlier Wills and bequeathed his entire present and future properties in favour of plaintiffs No. 1 and 2 and appointed plaintiff No.3 as Executrix of the said Will. It was also registered before the Sub-Registrar, Gandhinagar, Bangalore, on 30-12-1992. Under the said Will, nothing was bequeathed in favour of defendant No.1 and other defendants. Copy of the Will was furnished by the testator to the plaintiffs.

(G) The absence of defendant No.10-M.N.Shivaprakash, brought plaintiffs No.1 and 2 and testator more closer and he has given several documents of his properties, including Will executed by his father M.S. Narayana gowda to the plaintiffs.

(H) Thereafter, from February 1993, the health condition of testator M.N. Ranganathan was turning from bad to worse and therefore, there was a need for constant medical attention which forced him to take voluntary retirement from Kirloskar Electric Company Limited in June 1993.

(I) All along, plaintiff No.2 took care of testator by taking him to M.S. Ramaiah Institute of Cardiology. From the beginning of 1995, the health condition of the testator worsened and it was difficult for him to cover the distance from his Kamalanagar house to M.S. Ramaiah Institute of Cardiology. Since defendant No. 10 had gone abroad and plaintiff No. 1 was married and was staying at Shivamogga, the testator did not agree to stay with plaintiffs No.2 and 3. Then, in the mid of 1995, his health compelled the testator to reside in the house of defendant No.2, which was at Sanjayanagar, very near to M.S. Ramaiah Institute of Cardiology.

(J) When the testator started residing in the house of defendant No.2, defendant No.2 in collusion with and on the advise of defendant No.1 slowly made any communication between the plaintiffs and the testator impossible and prevented the plaintiffs from even visiting the testator inspite of repeated attempts.

(K) The marriage of plaintiff No.2 took place on 29-01-1996 and a reception in that regard was arranged on 28-01-1996. Plaintiff No.3 along with defendant No.4 had gone to the house of defendant No.2, to invite her and also the testator, they were not allowed to see the testator stating that he was seriously ill. So also, the testator was not brought to the marriage of plaintiff No.2 or to the marriage reception. Thus, defendant No. 1 and 2 kept the plaintiffs away from the testator till his death.

(L) In the meanwhile, the properties jointly held by the testator with defendant No.1, situated at Jogupalya inherited from his father M.S. Narayana Gowda, under the Will was sold by them at the influence of defendant No.1. The testator was sour towards defendant No.1 due to the said transaction and plaintiffs allege that sale consideration amount received by the sale was more than Rs.10,00,000/- and the share of the testator was never paid to him. (M) On 05-07-1996, the testator M.N.Ranganathan, breathed his last at M.S. Ramaiah Institute of Cardiology.

(N) Testator has made all the defendants aware of the Wills executed by him from time to time and he used to furnish copies of the Wills to the plaintiffs. It is stated that except the first Will at Ex.P2 dated 26-06-1981, in all other Wills the testator had bequeathed all his properties to the plaintiffs and defendant No.10. It is alleged by the plaintiffs that the testator was totally under the dominance and surveillance of defendants No. 1 and 2 for nearly a year before his death. Thus, all the original documents held by the testator M.N.Ranganathan, must have come into the custody of defendants No.1 and 2.

(O) During the obsequies ceremonies of testator, plaintiff No.3 enquired the defendants about the original of the Wills, for which, defendants feigned their ignorance and instead they asserted their right over the estate of the testator.

(P) Therefore, apprehending immediate attempts from the defendants of taking away all the movables left behind by the testator plaintiffs filed an application under Section 192 of Indian Succession Act in P & SC No.110/1996 before the City Civil Court, Bangalore and when the notice was

issued to defendants No. 1 to 6 they filed CRP No.3017/1996 before this Court. In the said CRP No.3017/1996, the defendants had alleged that the testator had executed a Will dated 27-01-1996 in their favour canceling the Will dated 30-12-1992. It is stated that CRP No.3017/1996 was disposed of with a direction to the trial Court to pass a considered order regarding issue of summons. The plaintiffs after obtaining copy of the alleged Will dated 27-01-1996 withdrew P & SC No.110/1996 and filed the present suit.

(Q) The plaintiffs asserted that the Will dated 27-01-1996 alleged to have been executed by the testator is obtained by the defendants by fraud, coercion etc., and therefore, it is void and the testator was physically impaired and had lost his testamentary capacity. In the four Wills executed by the testator during the period from 1981 to 1992 he clearly expressed his consistent wish that the properties owned by him had to go to the plaintiffs and since there are suspicious circumstances the alleged Will is liable to be declared as null and void.

4. On being issued with the summons, defendants appeared through their counsel before the trial Court.

5. Defendants No. 1 to 6 have filed their written statement as below:

(A) Though defendants No. 1 to 6 admitted the genealogical tree, relationship between the parties, the execution of the Will on 26-06-1981(Ex.P2), Will dated 01-03-1985 (Ex.P9), Will dated 07-12-1991 (Ex.P10), and also the Will dated 30-12-1992

(Ex.P11), they denied that the testator had any ill will as against defendants No. 1 to 6. They denied that the testator was more attached to defendant No. 10 and the plaintiffs. They also denied that the relationship of the testator M.N.Ranganathan, was strained with defendant No.1. They alleged that after 1992, the plaintiffs were pestering the testator for a Gift Deed.

(B) Defendants No. 1 to 6 also admit that the testator M.N.Ranganathan, was a divorcee. They also admitted that testator was working in M/s Kirloskar Electric Company Limited and he had purchased a site at Kamalanagar and thereafter, he had constructed a house in the same.

(C) The testator was taking the help of his brother defendant No.10 for consultation since he was a Doctor and the plaintiffs have taken advantage of such visits of the testator to defendant No.10 as having love and affection in bequeathing the properties to the plaintiffs. The visits were mainly for the purposes of consultation apart from one of their relationship. They admitted that certain properties devolved upon the testator and defendant No.1 under the Will executed by their father, M.S. Narayana Gowda. They also admit that in the Will dated 07-12-1991, the testator had bequeathed half of his Provident Fund amount to defendant No.1 and it is not on account of any change of the attitude between the brothers.

(D) Defendants No. 1 to 6 contended that the testator had taken voluntary retirement as he needed cash for his treatment. Therefore, the house inherited by defendant No.1 and the testator at Jogupalya was sold and there was a joint investment in the name of the testator and the defendant No.1. It is stated that the testator had also executed a general power of attorney in favour of defendant No.1 on 02-03-1996 to look after the properties owned by the testator.

(E) Defendants No. 1 to 6 alleged that plaintiff No.2 had not taken the care of testator and continuously ignored him. During hospitalization in Nursing home, the testator was attended by defendants No. 1 and 2 and during that time, when he was in Ramaiah Institute of cardiology, he was attended by defendants No. 1, 2, 3 and 4 and they also assisted the testator to take treatment at Jayadeva Hospital, Manipal Hospital, etc. The plaintiffs were never in picture at that time as they were satisfied that the Will executed in their favour was operative.

(F) The plaintiffs have probably thought that the testator will never recoup to revoke the Will dated 30-12-1992 and execute another Will and the testator used to tell these defendants that the plaintiffs were pressurizing him to immediately execute the Gift Deed in respect of Kamalanagar property in favour of plaintiff No.1.

(G) Though it is true that in 1995 the health of the testator worsened, but it was not as stated by the plaintiffs and his mental and physical conditions were good. Plaintiffs No.1 and 2 and their mother refused to accommodate the testator even for a short period in their house and the defendants were in

the meanwhile taking care of the testator and his hospitalization etc.; and therefore, defendant No.2 offered the testator to stay with her. It is stated that two alternatives were offered to the testator and the first one was to stay in the house of defendant No.2, which was not accepted by the testator since his conscience did not allow him and the second option was to allow the testator to build a room in the first floor of the house of defendant No.2 and stay there. However, the testator refused both the options and he continued to live in his own house.

(H) Between 1995 and 1996, the testator had to be hospitalized number of times in M.S. Ramaiah hospital and various other hospitals and at that time also, the plaintiffs did not come and take care of the testator. The plaintiffs did not volunteer any help or visited him. Therefore, the testator had expressed that the plaintiffs were pressing him to execute the Gift Deed and he changed his mind to execute the Will in favour of all his brothers and sisters by revoking the earlier Will. The testator was an educated person and he was mentally agile and taking his own decision and only the physical help was rendered by the defendants.

(I) They admitted that testator was staying in the house of defendant No.2 and that the testator could not attend the wedding of plaintiff No.2 due to his health conditions. It is stated that even after the marriage, plaintiff No.2 did not even visit the testator to receive his blessings. They denied that plaintiffs were not allowed to meet the testator Ranganatha.

(J) On 12th day ceremony of testator, plaintiff No.3 broached the subject of the property of testator and the Will of 1992 and defendant No.1 requested that it may be discussed on some other day. It is alleged that plaintiff No.3 was adamant and wanted the matter to be discussed then and there. Therefore, defendant No.1 brought to the notice of the plaintiff No.3 about the subsequent Will executed by the testator in the year 1996. At that time, plaintiff No.3 shouted that for her 1992 Will is only relevant and she was not even ready to go through the copy of the Will and left in huff. Therefore, defendants No. 1 to 6 contended that the Will dated 27-01-1996 of the testator is the last Will and there was no cause of action for the plaintiffs and the Court fee paid is not sufficient.

(K) Ultimately, defendants No. 1 to 6 prayed that the suit may be dismissed and they also further prayed that the Court may please to declare that the Will made by testator dated 27-01-1996 as a last Will and to declare that earlier Will dated 30-12-1992 has been revoked. They also stated that they have no objection that the properties being partitioned as per the bequest Will made in the last Will of 1996.

6. On the basis of the above pleadings, following issues were framed by the trial Court;

1. Whether the plaintiffs prove that the will dated 23.01.1996 executed by M.N Ranganathan, which was registered in the office of Sub-Registrar, Rajajinagar, Bengaluru, dated 27.01.1996 is null and void?

2. Whether the plaintiffs prove that the will dated 30.12.1992 executed by M.N Ranganathan is his last will under, which they have succeeded to the estate of Late M.N Ranganathan?

3. Whether the defendants prove that there is no cause of action to file the suit?

4. Whether the court fee paid is insufficient?

5. Whether the plaintiffs are entitled for declaratory reliefs as prayed for?

6. What Order or Decree?

7. Plaintiff No.3 as Power of Attorney Holder of plaintiffs No. 1 to 2 was examined as PW1 and four witnesses were examined on their behalf as PW. 2 to PW.5 and Exhibits P1 to P25 were marked. Defendant No.1 was examined as DW1 and a witness was examined on their behalf as DW.2. Exhibits D1 to D14 were marked and received in evidence.

8. It is necessary to note that during the pendency of the suit, it was brought to the notice of the Court that the property of the testator M.N.Ranganathan was being occupied by some unknown person and therefore, a Court Receiver was appointed.

9. After hearing the arguments of both sides, the trial Court answered issue Nos. 1 to 3 in the negative, issue No.4 in the affirmative and held that the plaintiffs are not entitled for declaration and dismissed the suit.

10. Being aggrieved by the said judgment, plaintiffs have approached this Court in appeal.

11. The plaintiffs in their appeal contended that, the impugned judgment is absolutely arbitrary, illegal and capricious and it lacks any reasoning to the decision arrived by the trial Court. It is contended that the suspicious circumstances specifically pointed out by the appellants surrounding the Will Ex.D1 propounded by the defendants were not properly appreciated by the trial Court and trial Court never gave any weightage to it. It is also contended that the trial Court failed even to appreciate that a Court Receiver was appointed in the case and suit properties were in his custody and appropriate orders should have been passed regarding discharging or otherwise of the Court Receiver. It is alleged that the trial Court utterly failed to consider the glaring misconduct committed by defendant No.1 as Court Receiver which were specifically pointed out by the plaintiffs. They contended that the trial Court has grossly erred in not noticing about the genuineness of Ex.D1 and the physical and mental condition of the testator at the relevant point of time.

12. On issuance of notice, respondents/defendants have appeared through their counsel. The trial Court records have been secured on the appeal being admitted and the arguments by learned counsel Sri Chaitanya Hegde for appellants/plaintiffs and learned counsel Sri G.R. Mohan, appearing for respondents were heard.

Arguments by Appellants:

13. The learned counsel appearing for appellants/plaintiffs has in his well articulated, meticulous and elaborate arguments submitted that, there are as many as 15 suspicious circumstances surrounding the Will. During his arguments, he initially, took us through the case discerning from the pleadings and evidence on record and pointed out several discrepancies in the evidence and the contentions of the defendants.

14. In second part of his arguments, he argued that the law relating to the Will is clear and that the person who approaches the Court propounding a Will has to dispel all the suspicious circumstances surrounding the Will. In this regard, he submits that the plaintiffs have cleared all the suspicions in respect of the Will at Ex.P11 and he sought to consider Ex.P11 as an admitted document by the defendants. Therefore, he submits that there is no necessity for the plaintiffs to discard or answer the suspicious circumstances. Moreover, no such suspicious circumstances were pointed out by the defendants in respect of Ex.P11. He argued that suspicious circumstances regarding Ex.D1 pointed out were not cleared or answered by the defendants and therefore, Ex.D1 is not reliable. He also pointed out that the trial Court in the impugned judgment has not considered the suspicious circumstances and was casual in approaching the case on hand. He points out that issue No.1 is apparently, contrary to the settled principles of law and the burden of proving the Will at Ex.D1 as null and void has been put on the plaintiffs and the defendants were not saddled with the burden of proving Ex.D1 as they were the propounders of the Will. Therefore, the reasoning of the trial Court to answer the issues in the negative as may be found in para 14 to 18 and the conclusions at para 19 to 21 of the impugned judgment are not sustainable in law.

15. In third part of his arguments, he pointed out that the finding of the trial Court in respect of valuation was also not proper and no finding was given by the trial Court on the question of Court fee. It is submitted that when the trial Court has directed the plaintiffs to pay the Court fee on a sum of Rs.22,00,000/- there was no basis for it and as such, the impugned judgment is not proper and correct.

16. In fourth part of his arguments, he submitted that by order dated 19-4-1997 trial Court has directed the parties to maintain *status-quo* and the same was continued by this Court also. It is submitted that on 24-03-1999, defendant No.1 was appointed as the Receiver to put the item No.1 Kamalanagar house property for profitable use by letting out the same for 2-3 years. He has also asked to deposit the amounts available out of the suit schedule property in Nationalized bank and also furnish proper accounts to the court. However, defendant No.1 has not complied the said order and therefore, by the order dated 17-01-2003, defendant No.1 was removed from the Receivership for his failure to perform the duties and in his place, plaintiff No.3 was appointed as the Court Receiver. A challenge to the said order in

MFA No.2054/2003 by defendant No.1 was also dismissed by this Court. Thereafter, plaintiff No.3 found that defendant No.1 has misappropriated the amounts found in the suit schedule properties and he even obstructed plaintiff No.3 from acting as a Court Receiver by not handing over all the suit schedule properties. Thereafter, by order dated 29-07-2010 on IA No.22 at the instance of the defendants, an Advocate Sri R. Shivaprasad was appointed by consent of both the parties as the Receiver. During the receivership of the learned counsel Sri R. Shivaprasad, it was found that several persons were found to be occupying the Kamalanagar house property and they are all part of the record. A show-cause notice was also issued to the Court Receiver and he has given a reply and ultimately, this Court by order dated 09-04-2019 ordered the matter shall be considered at appropriate time. Therefore, the learned counsel for the appellants/plaintiffs submits that the impugned judgment is unsustainable under law and the same is liable to be set aside and the suit filed by the plaintiffs deserves to be decreed.

17. In support of his case, learned counsel for the appellants has placed reliance on the following judgments:

1. C Venkata Swamy Vs. H.N Shivanna (D) by L.R. and Another ¹
2. Balath and Ayutham and Another Vs. Ezhilarasan²
3. Niranjana Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others ³⁴
4. B. Venkatamuni Vs. C.J Ayodhya Ram Singh and Others
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5. Krishna Mohan Kul alias Nani Charan Kul and Another Vs. PratimaMaity and Others ⁵
6. H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others ⁶
7. Narayan Krishnaji Joshi and Another Vs. KrishnajiMahadeo Josh ⁷

¹ AIR 2017 SC 5604

² (2010) 5 SCC 770

³ 2007 AIR SCW 203

⁴ AIR 2007 SC 311

⁵ AIR 2003 SC 4351

⁶ AIR 1959 SC 443

⁷ AIR 1958 MP 86

8. RajinderPershad (Dead) by L.Rs Vs. Smt. Darshana Devi ⁸
9. Sri Mohammad Omar Vs. Saran Bi⁹

Arguments by Respondents:

18. *Per-contra*, learned counsel appearing for defendants/respondents submitted that the evidence adduced by the plaintiffs in respect of the mental and physical condition of the testator itself show that he was fit and mentally agile to execute the Will. He submits that there was no necessity for the defendants to adduce any further evidence, since the plaintiffs has adduced the evidence of PWs 2 to 4 who are the medical officers, under whom the testator had been treated. All these witnesses had vouched for the disposable state of mind of the testator. Therefore, he submits that the physical and mental conditions of the testator were fit and he was in disposable state of mind.

19. He further submitted that the endorsement on Ex.D1 that it was presented for registration before the Sub- Registrar at 2.50 p.m., but in fact, DW.2 had stated that they had returned by around 2.30 p.m. cannot be a discrepancy when the deposition is after lapse of several years. He submitted that none of the natural successors of testator has been disinherited by the testator by virtue of the Will at Ex.D1 and equal distribution was made by the testator to all his brothers and sisters. He further submitted that the testator was suffering from heart ailment and it in no way affects the disposable state of mind and therefore, the contention of the appellants is not sustainable in law. He submitted that the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, have been sufficiently complied by the defendants and therefore, the impugned judgment is proper and sustainable in law.

20. In support of his case, learned counsel for the defendants placed reliance on the following decisions:

⁸ 2001 AIR SCW 3042

⁹ ILR 1974 KANT 1134

1. Uma Devi Nambiar and Others Vs. T.C.Sidhan (Dead) ¹⁰
2. Sridevi and Others Vs. Jayaraja Shetty and Others ¹¹
3. Niranjana Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others ¹²

21. We have also heard the Court Receiver, learned counsel Sri R. Shivaprasad. He submitted that he had not received the possession of Kamalanagar property and in response to the notice issued by this Court he has submitted his reply and the same may be considered. He also submits that it came to light that the Kamalanagar House property is being occupied by somebody else and he also had lodged complaint to the police and Lokayuktha and had filed several complaints and had taken all the action at his disposal and therefore, he has preserved the property entrusted to him.

22. In the light of the above submissions made, the points that arise for our consideration in this appeal are as below:

- (1) Whether the trial Court erred in fastening the burden to provide negative proof of the Will at Ex.D1 on the plaintiffs, when the defendants are the propounders of the Will at Ex.D1?
- (2) Whether the defendants have proved that Ex.D1-Will was executed by testator M.N.Ranganathan?
- (3) Whether the plaintiffs have proved that Ex.D1, Will is surrounded by suspicious circumstance and therefore, it is null and void?
- (4) What orders are to be issued in respect of IA No.1/2015 filed by the appellants concerning the properties in the hands of the Court Receiver?

Re.point No.1:

23. Though normally the burden of proof concerning a Will is on the propounder, the trial Court has framed issue No.1 casting the burden on the

¹⁰ (2004) 2 SCC 321

¹¹ (2005) 2 SCC 784 ¹² AIR 2007 SC

plaintiffs to prove that Will executed by the testator M.N.Ranganathan dated 27-01-1996 was null and void and also framed an issue that Will executed by M.N.Ranganathan dated 30-12-1992 is a valid Will. Obviously, issue No.1 should have been fastened upon the defendants. It was the defendants who came up with the contentions that testator M.N.Ranganathan had executed the Will in the year 1996. Therefore, to that extent, the trial Court had erred in fastening the negative burden on the plaintiffs. However, we do not find any reason that on account of negative burden being caste on the plaintiffs, the defendants were put to any prejudice. It was the defendants who contended that the deceased M.N.Ranganathan had executed the Will, Ex.D1 on 27-01-1996. Therefore, the burden was squarely on the defendants to prove that aspect. It is also relevant to note that the defendants had propounded the Will as per Ex.D1 and therefore, the burden of proving the same as required under law was on them. Moreover, the point that there was an erroneous issue framed was not raised before the trial Court. The parties have gone into the trial with full knowledge that they have to prove the Wills propounded by them.

Re.Points No.2 and 3:

24. Before venturing into the factual matrix of the case, it is relevant to note that the law in respect of the proof of the Will is no more *res-integra*. The land mark judgment is in the case of **H. Venkatachala Iyengar Vs. B.N.Thimmajamma and others**¹² which has dealt with the matter in detail. In this judgment, the Apex Court has culled out in succinct manner the law relating to the proof of the Will. In para 18 to 22, the Apex Court has dealt elaborately about the same. We have also noticed that the principles enunciated in the above judgment of the Apex Court has been referred to and followed in its innumerable subsequent judgments.

25. The judgment relied by learned counsel for the appellants-plaintiffs in the case of **Balatandayutham and another Vs. Ezhilarasan**(supra)also rely on the judgment in the case of **H.Venkatachala Iyengar Vs. B.N. Thimmajamma and others** (supra). The judgment of the Apex Court in **Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao and others** (supra) also places reliance on the judgment in the case of

¹² AIR 1959 SC 443

B.N.Thimmajamma (referred supra). In both these judgments, the Apex Court held that ;

"in case where the testators mind is feable and he is debilitated and there is no sufficient evidence as to mental capacity of the testator or where the disposition in the Will is unnatural, improbable or unfair in the light of the circumstances or it appears that the bequest in the Will is not the result of the testator's free will and mind, the Court may consider that the Will in question is encircled by suspicious circumstances".

26. The Apex Court in both these judgments has enlisted various suspicious circumstances and the health of the testator and unnatural disposition are mainly given importance. The judgment of the Apex Court in the case of **B.Venkatamuni Vs. C.J.Ayodhya Ram Singh and others**, lays down that;

"...when question comes up for consideration before the Court in regard to the grant of Probate or Letter of Administration with a copy of the Will annexed thereto, it is trite that all circumstances should be taken into consideration".

27. The judgment of the Hon'ble Apex Court in the case of **Krishna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and others** referred supra, lays down that;

"when a person is in a fiduciary relationship with another and the latter is in a position of active confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position and he has to prove that there was a fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bonafide".

28. The learned counsel for the appellants also relied on the judgment in the case of **Narayan Krishnaji Joshi and another Vs. Krishnaji Mahadeo Joshi**, where again, it was held that;

"The endorsement of the Sub-Registrar that the Will was read over to the executant and understood by him, cannot be taken as decisive of the testamentary capacity of the testator".

29. It is also relevant to note that all the above decisions were culled out by a Division Bench of this Court in the case of **J.T. Surappa v. Satchidhanandendra Saraswathi Swamiji Public Charitable Trust¹⁴**, where in it was held that in the path of enquiry about the genuinity of the Will, there are five steps to be followed. This Court had laid down that these five steps may be termed as 'Panchapadhi'. The five steps prescribed are as below:

"24. Therefore, the court has to tread a careful path in the enquiry to be conducted with regard to Will. The said path consists of five steps¹⁴2008 SCC OnLineKar 188 : ILR 2008 Kar 2115 "PANCHAPADI". The path of enquiry and steps to be traversed are as under:—

- (1) Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will?
- (2) Whether the natural heirs have been disinherited? If so, what is the reason?
- (3) Whether the testator was in a sound state of mind at the time of executing the Will?
- (4) Whether any suspicious circumstances exist surrounding the execution of the Will?
- (5) Whether the Will has been executed in accordance with Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Evidence Act?

30. Per contra, learned counsel appearing for the respondents/defendants has placed reliance on the judgment in the case of **Uma Devi Nambiar and others Vs. T.C.Sidhan** which chronicles several of the judgments rendered by the Apex Court, including the judgment in the case of **B.N. Thimmajamma** (referred supra). It was laid down that while dealing with an application under Section 192 of the Succession Act, the testamentary capacity of the testator need to be appreciated by the Court. The principles laid down cannot be disputed and they are in consonance with the settled

principles of law, which says that the propounder of the will has to remove the suspicious circumstances.

31. He also relied on the judgment in the case of **Sridevi and others Vs. Jayaraja Shetty and others**, where it was held that; "Even though the testator was aged about 80 years at the time of execution of the Will, he died after 15 days of the execution of the Will and the two attesting witnesses and the scribe have categorically stated that the testator was in sound state of mind, the Will has to be held to be proved".

In this judgment also, the Apex Court had relied on the judgment in the case of **B.N. Thimmajamma** (referred supra).

32. In the light of the propositions laid down by the Apex Court in all these judgments, it is the bounden duty of propounder of the Will to explain all the suspicious circumstances. The reason being that through a Will a dead man entrusts to the living the carrying out of his wishes. As it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was made, it is essential that trustworthy and effectual evidence should be given to establish the Will. Unlike other documents, the Wills speaks from death of the testator. It is ambulatory and it becomes effective and irrevocable on the death of the testator and it is a declaration in the prescribed manner of the wish and will of a person making it with regard to the matters which he wishes to take effect upon his death. Therefore, when it is propounded or produced before the Court, the testator who has already departed the world cannot say whether it was his will or not and it was out of his own volition or not and this aspect naturally introduces an element of solemnity in the decision of question as to whether the document propounded is proved to be last Will of the testator. It is also important to note that the Court which is in the path of enquiry about the truthfulness of the Will and ascertaining the intention of the testator has to step into the shoes of testator, peep into his mind and then find out whether the testator could have done the disposition as mentioned in the Will. If there are circumstances, which severely affect the decision making process of the testator, then it obviously amounts to a suspicious circumstance, unless the same are dispelled would negate the Will. With these aspects in mind, we

proceed to consider the proof of the Will propounded before us by both the sides.

33. It is evident that the defendants are relying on the Will produced by them at Ex.D1. Ex.D1 is a original Will. The burden of proving Ex.D1 is upon them. They being the propounders, have to prove the said Will and dispel all the suspicious circumstances surrounding it. So far as the Will at Ex.P11, the plaintiffs have to establish that such a Will was executed by the testator and it also reflects the mind and intention of the testator. They also have to discard the suspicious circumstances by offering sufficient reasons. It is pertinent to note that the defendants do not deny Ex.P11. The contention of the defendants is that Ex.D1 is the last Will and testament of the testator. They have not denied that the testator had executed Exs.P2, P9, P10 and P11, prior to executing Ex.D1. With these facts in mind, we proceed to analyze the evidence on record.

34. Plaintiff No.3 has entered the witness box and deposed as PW.1. In her examination-in-chief by way of affidavit, the averments made in the plaint are reiterated. She contends that the alleged Will dated 27.01.1996 set up by the defendants is not the Will of late M.N.Ranganathan and his last Will was dated 30.12.1992, which is at Ex.P11. She has produced the certified copy of the Will dated 27.01.1996 at Ex.P4 and the original of which is marked as Ex.D1. Exhibits D1 and D2 were produced at the instance of the plaintiffs by the defendants.

In the cross-examination much of the elicitions were in respect of the valuation. The suggestion to her that M.N.Ranganathan was healthy and he had been to the SubRegistrar's Office for the purpose of registering the Will at Ex.D1 has been denied. Except denials, there are no other elicitions or elucidations of the facts involved in the crossexamination.

35. On behalf of the plaintiffs, they examined PWs.2, 3 and 4, who are the Doctors, who had treated the testator M.N.Ranganathan. PW.2 states that he was Resident Medical Officer of M.S.Ramaiah Hospital, Bengaluru and as per the hospital records, testator-M.N.Ranganathan was aged about 52 years and was treated between 23.05.1992 to 05.07.1996 on a number of occasions both as an outpatient as well as an inpatient. He states that testator had visited cardiology outpatient department 26 times and he was admitted

in the same department on 4 spells i.e., from 04.08.1992 to 06.08.1992, 31.12.1992 to 04.01.1993, 08.03.1994 to 17.03.1994 and 29.06.1996 to 05.07.1996. It is relevant to note that the last spell of inpatient treatment was from 29.06.1996 to 05.07.1996, on which day, M.N.Ranganathan died.

He states that M.N.Ranganathan was known case of rheumatic heart disease and had taken treatment at C.M.Vellore in March 1992. His deposition is elaborate and he narrates what are all the treatment that was provided to the testator on all these inpatient spells of admission. So far as the admission from 29.06.1996 to 05.07.1996, he states that the testator had presented with chronic severe asthma, mental disorientation and gynaecomastia, chronic digoxin toxicity. He was admitted to the critical care unit under cardiology and on 04.07.1996, testator complained of chest pain and on 05.07.1996, he had an episode of hematemesis and blood transfusion was started but he could not survive. In this regard, he had produced the hospital records and they are marked as Ex.P5.

In the cross-examination, it was elicited that the patient was able to walk during the periods mentioned in the affidavit and till 1994, the mental condition of M.S.Ranganathan was alright and in between 13.04.1995 and 29.06.1996, he had not visited the hospital. Therefore, he could not say anything about the mental condition during that period.

36. PW.3-Dr.Ramesh, was working as an Assistant Professor in Jayadeva Institute of Cardiology and he only produced the hospital records pertaining to the inpatient treatment from 29.08.1995 to 20.09.1995, which is at Ex.P7. His evidence shows that the patient was suffering from breathlessness and swelling in lower limbs and scrotum. He says that at the time of the discharge, the testator M.N.Ranganathan was stable.

37. PW.4-Dr.Kiran happens to be the Consultant Doctor at the Chord Road Hospital, Bengaluru and he states that testator-M.N.Ranganathan, aged about 62 years was admitted to the Chord Road Hospital from 06.10.1995 to 09.10.1995. He states that the patient was depressed for about a month and not taking proper diet and a Psychiatrist-Dr.Swaminathan had treated him. It was stated that he had *paranoid psychosis*. The medical records are produced by him and they were marked as Ex.P8.

In the cross-examination, it was elicited that the health of M.N.Ranganathan had improved and on 09.10.1995, he visited him and he was in normal condition. He says that he cannot comment as to whether health condition of M.N.Ranganathan was improved and therefore, he did not go to the hospital after the discharge from the hospital.

38. PW.5-Shashikanth, states that he was working as a Document Writer at Mayo Hall and he had signed as an Attesting Witness to the Will dated 17.12.1991 and also the Will dated 30.12.1992, executed by M.N.Ranganathan, which are marked as Exs.P10 and 11. Obviously, these two documents are the certified copies and the originals were not produced. There is no dispute in respect of these two documents as the defendants have admitted that M.N.Ranganathan had executed the Wills earlier. However, PW.5 was cross-examined by the defendants and it is elicited that he does not know any of the plaintiffs or the defendants. He states that the Court had issued the summons and therefore, he appeared before the Court. However, it was elicited that the learned counsel for the plaintiffs had told him what is to be deposed.

In the re-examination, it has been clarified that the manner in which the affidavit has to be prepared was only told by the counsel for the plaintiffs. He states that he does not know who have instituted the suit and for what purpose, it has been instituted and he has come to the Court only to give evidence with regard to the Will to which he has signed. He states that M.N.Ranganathan was the client of his uncle i.e., deceased K.Mohan, who was also a Document Writer. Since M.N.Ranganathan used to come to his uncle often and he knew PW.5 as nephew of K.Mohan, he visited him and has signed on Ex.P11. He says that he does not remember as to whether plaintiff No.3 was also present at the Sub-Registrar's office at the time of registration of Ex.P11. When he was shown Ex.D1, he stated that the signature on Ex.D1 is also that of M.N.Ranganathan. He elicited that at the time of registration of Exs.P10 and 11, deceased Ranganathan was suffering from hearing ailment (heart ailment). He says that mental condition of Ranganathan was good and he was in a position to execute Exs.P10 and P11.

39. As against the above oral testimony, defendant No.1 was examined as DW.1. He reiterated the contentions taken up by them in the written statement. He was subjected to elaborate cross-examination by learned

counsel for the plaintiffs. We have gone through the cross-examination of DW.1, which is spread over eight spells on 06.06.2007, 04.04.2008, 12.06.2008, 03.01.2009, 10.02.2009, 07.03.2009, 20.06.2009 and 17.09.2009. The cross-examination being elaborate on each and every aspect of the contentions taken up by the plaintiffs and he being the brother of the testator, it gains importance. It also throws light about the nature of the relationship between the parties and the reason as to why the testator was staying in the house of defendant No.2-M.N.Janaki. We will deal with the elicitations in the cross-examination with respect to the doubtful circumstances pointed by the learned counsel for the plaintiffs.

40. DW.2 happens to be the husband of defendant No.2 and the attesting witness to Ex.D1. His deposition before the Court is very short and discloses that on

27.01.1996, M.N.Ranganathan took him to Sub-Registrar's Office at Rajajinagar and requested him to sign as a witness to the Will. Accordingly, he has signed the Will as a witness in the presence after the testator signed the Will. He does not mention anything about the presence of the attesting witness.

In the cross-examination, it is elicited that Ranganathan was staying in his house and he and his wife i.e., defendant No.2 had permitted Ranganathan to stay in their house as it was nearer to M.S.Ramaiah Hospital. It is elicited that prior to 1995, the testator-Ranganathan had not stayed in his house for months together at any time. He states that when Ranganathan came to his house in 1995, he was there till his death. It is also elicited that none were staying in the Kamalanagar House and it was locked and Ranganathan never went to Kamalanagar house. It is elicited that when M.N. Ranganathan asked him to come to Sub-Registrar's Office, the Will was ready and he did not know the contents of the said Will. He says that he had not informed defendant No.2 about going to the office of the Sub-Registrar. It is elicited that they went in an Auto Rickshaw at about 01.00 p.m., and reached the SubRegistrar's office at about 01.30 p.m., and when the registration was complete, it was about 02.30 p.m., and thereafter, they returned back. It is elicited that the scribe S.Shamanna is known to him but he does not know the other attesting witness Rajagopal. He states that he did not see the Will being signed by Rajagopal. He admits that the obsequies ceremony of Ranganathan was conducted in his (DW2) house only. It is also elicited that when he visited

Kamalanagar House after 5 days of death of the testator M.N.Ranganathan, while they were cleaning the house he saw Ex.D1 on the second time. He states that he does not know how Ex.D1 had reached the Kamalanagar house of the testator. This evidence gains some importance so far as the custody from whom Ex.D1 is produced. It is evident that Ex.D1 was produced by the defendants on being asked to be produced by the plaintiffs.

41. With the above ocular evidence which is available on record, we now proceed to consider the various suspicious circumstances pointed out by learned counsel appearing for the plaintiffs and the explanations offered by the learned counsel for the respondents in reply.

42. As noted supra, the burden of proving that the testator had executed the Will as per Ex.D1 bequeathing the schedule properties to the plaintiffs as well as defendants No. 1 to 9 is on the defendants. Though issue No.1 fastened the burden of proving Ex.D1 as null and void on the plaintiffs, such contentions that the issue is erroneous was not raised before the trial Court. Both the parties have entered trial with the knowledge that the burden of proving Ex.D1 is on the defendants, for, they had sought a declaration that the Ex.D1 is valid and they are entitled for the bequest. Therefore, we do not find any reason to hold that incorrect framing of the issue No.1 has resulted either in any erroneous approach to the issue involved in the suit or prejudiced their interests.

43. The learned counsel appearing for the appellants/plaintiffs has pointed out the following suspicious circumstances to contend that the Will at Ex.D1 is not proved as required under law:

- A. The health condition of the testator during the relevant period show that he could not have traveled to purchase the stamp papers on 23-01-1996 and again, could have traveled to Sub-Registrar's Office, Rajajinagar, for presentation and registration of the Will. The General Power of Attorney alleged to have been executed as per Ex.D2 is dated 02-03-1996, whereas it bears the consecutive serial number of the stamps of Ex.D1.
- B. There is no compliance of Rule- 6 read with Rule 14F(7) of the Karnataka Stamp Rules, 1958 that the signature of the purchaser of the stamp should be obtained on the back of it.

- C. According to defendant No.1, he was looking after the properties of the testator from 1992 and there is no explanation why there was a necessity of Ex.D2- General Power of Attorney, in March 1996.
- D. The defendants have not produced any evidence to show the physical and mental condition of the testator from 10-10-1995, on which day he was discharged from the hospital. Defendant No.2 has not entered the witness box and her husband i.e., DW2 does not utter anything about the disposable state of mind of the testator.
- E. Ranganathan testator died on 05.07.1996. The defendants contend that Ex.D1 was found for the first time on the 5th day of the death of the testator while cleaning his Kamalanagar house. The endorsement of the Sub-Registrar as required under Section 60 of Registration Act is dated 17-7-1996. Therefore, the defendants could not have shown the copy of Ex.D1 to the PW1 on the 12th day death ceremony of the testator.
- F. There is no evidence to conclusively establish that the testator himself had presented Ex.D1 before the Sub-Registrar qua the other evidence that the testator was suffering from ailments like swelling of the legs, inability to fold the legs and for that reason he had not attended the marriage and reception of plaintiff No.2-Ramesh on 29-1-1996.
- G. Though defendant No.2 was looking after the testator, has not entered the witness box to speak about the physical and mental condition of the testator at relevant point of time.
- H. If the testator had lot of affection towards defendant No.2 as contended by DW1, why she was not a beneficiary under the Wills at Ex.P2, P9, P10 and P11? Curiously, DW2 does not inform about Ex.D1 to his wife i.e., defendant No.2. There is no elicitation as to why the testator had included the other defendants as beneficiaries when he had excluded them in the previous Wills.
- I. Defendant No.1 in his testimony says that in the year 1992, after discharge from the hospital the testator stayed in the house of defendant No.2 for recuperation. But the same is denied by DW2.
- J. The manner in which Ex.D1 came in their custody is not explained by them in satisfactory way. Ex.D1 was registered by the Sub Registrar on 17-7-1996, but it was in their hands on the 5th day of the death of testator on 10-7-1996. It is also the case of the defendants that testator has never visited his Kamalanagar house after he started staying in the house of defendant No.2

- in the year 1995 till his death. Therefore, Ex.D1 finding its way to the house of the testator at Kamalanagar creates a serious doubt.
- K. The testator had consistently shown his intention through Exhibits P2, P9, P10 and P11 to bequeath all his properties to the plaintiffs and there is no acceptable evidence to show that he had changed his mind and nothing is suggested to PW1 in that regard.
- L. When there was a partition between the testator and defendant No.1 in respect of the house inherited by them under the Will of their father, to avoid any further complications, and when defendant No.1 was excluded from any bequeath under Exhibits P9, P10 and P11, there is no reason to include him under the Will at Ex.D1.
- M. The properties which are all the subject matter of the Will at Ex.P11 are not found in Ex.D1 and this discrepancy is not explained.
- N. Defendant No.1 claims that while acting as Court Receiver he had lent a loan of Rs.1,25,000/- to DW.2 and the husband of defendant No.5 out of the estate of the testator, without knowledge or permission of the Court and such lending of the loan was denied by DW.2. Defendant No. 5 did not enter the witness box.
44. The first aspect to be considered by the Court in the path of enquiry of the testamentary disposition by the testator is to ascertain whether the Wills at Ex.D1 and Ex.P11 satisfy the requirements of law in proving them. As noted supra, the written statement of the defendants at para 9 and 10 shows that they have admitted that there was Will by testator M.N. Ranganathan on 30-12-1992, but they alleged that it was a Will under the influence of the plaintiffs. In para 12 of the written statement also, the defendants referred to the Will dated 30-12-1992 (Ex.P11) and state that the plaintiffs had thought that the testator may not revoke the said Will and execute a fresh Will. Further, in para 16 of the written statement also, it is stated that on 12th day ceremony, plaintiff No.3 had broached about the Will of 1992. In para 21 of the written statement, they state that the Will dated 30-12-1992 has been revoked and a fresh Will dated 27-01-1996 was duly executed by the testator. Again, in para 25, they state that the Will dated 30-12-1992 has been duly revoked. Therefore, the contention of the defendants is that the Will dated 30-12-1992 has been revoked by the Testator M.N.Ranganathan. There is no allegation that the testator was not in sound and disposable mind or that the said Will was concocted or suffers from any other infirmity.

45. The defendants had produced Ex.D1, the Will dated 27-01-1996 at the instance of the plaintiffs and it was marked during the examination-in-chief of the plaintiffs to show that it was surrounded by suspicious circumstances, without admitting the contents of it. A perusal of Ex.D1 would show that it is drawn on stamp papers containing eight sheets and bears the serial number 1299 to 1306 and it was purchased on 23-01-1996 by the testator from the Stamp Vendor R Ravindra of Malleswaram, Bangalore. It bears the signature of the testator on each page and it was presented to the SubRegistrar, Rajajinagar, Bangalore, on 27-01-1996 at 2.50 p.m. by the testator. The endorsement of the Sub-Registrar shows that it was registered on 17-07-1996 in Volume No.3, Book No.79, Page Nos.41-46 at Sl.No. 400 for the year 1995-96. It also bears the signature of the testator at the last page along with the signature of the attesting witnesses i.e., N. Venkatesh (DW2) and one K.V. Rajagopal Rao, who was a Stamp Vendor. It was drafted by Deed Writer S. Shamanna. Therefore, Ex.D1 bears the characteristics and essential requirements of the Will. It is worth to note that the endorsement as required under Section 60 of the Registration Act, is said to have been done on 17-7-1996.
46. Admittedly, the testator M.N. Ranganathan, died on 05-07-1996. The Certificate of Registration, being 17-07-1996, it could have reached the testator or the executor only after 17-07-1996. Therefore, the defendants were bound to explain as to how they had come in possession of Ex.D1, much prior to 17-07-1996. DW.1 in his cross-examination dated 17-09-2009, states that after 5-6 days of the death of the testator, he, DW2-Venkatesh and his son Shashikiran, had been to the house of testator and while cleaning, he found a big plastic envelope containing Ex.D1 and a few deposit receipts.
47. DW.2 also states that after five days of death of testator M.N.Ranganathan, he had been to the Kamalanagar house for cleaning and there he saw Ex.D1 for the second time. He states that he does not know how Ex.D1- Will had reached Kamalanagar house. Therefore, it is evident that there is no satisfactory explanation as to how Ex.D1 came in the hands of the defendants, when admittedly testator was staying in the house of defendant No.2 and died on 05-07-1996. Evidently, this is a suspicious circumstance which has not been explained.
48. DW.1 in cross-examination dated 07-03-2009 states that since the testator was in need of recouping his health and he had to depend on somebody, defendant No.2 invited him to stay with her. He also

explains that the testator was moving independently only in the neighborhood of the house but not going to the market or other places. He pleads ignorance as to whether anybody else have taken the testator for about 7-8 kilometers while he was staying in the house of defendant No.2. He states that he did not take the testator anywhere. However, he distances himself away as to where and how Ex.D2, general power of attorney was executed. Evidently, Ex.D2 was executed on 02-03-1996 before a notary and there is no endorsement of the notary about the place and address where it was notarized. Therefore, this evidence of DW1 shows the divergent contentions about the capability of the testator to move around. There is no evidence as to where and who had taken the testator to the notary on 02-03-1996.

49. It is also relevant to note that Ex.D1 and Ex.D2 bear the consecutive serial numbers and they were purchased on the same day, i.e., on 23-01-1996. If the testator wanted to execute a General Power of Attorney, and when he was suffering from swelling of the legs and was unable to attend the marriage ceremony of plaintiff No.2 on 29-01-1996, how he could go to the stamp vendor on 23-01-1996, visit the Sub-Registrar's office on 27-01-1996 and again go to the notary on 2-3-1996? Where the Will Ex.D1 was got prepared and typed is also not available on record. The fact remains that the testator was unable to move as there was swelling in his legs and as he could not fold his legs as stated by DWs. 1 and 2. The testator moving to the stamp vendor to purchase the stamps and to the scribe and then to the Sub-Registrar's office on 27-01-1996, in an auto rickshaw appears doubtful.

So also the testimony of the DW 2 does not show that the testator has acknowledged the contents of the Ex.D1 before him, which creates a dent in the valid execution and attestation as required under Sec 63 of the Indian Succession Act.

50. The next circumstance which is of significance is about the execution and presentation of Ex.D1 before the Sub-Registrar. The testimony of DW.2 shows that though he admits that testator had confidence in defendant No.2Janakamma; he denies that for such confidence only testator had gone to the house of defendant No.2. He categorically states that prior to 1995, testator had not resided in his house for months together at any point of time. He also states that since 1995, after testator came to his house, the testator never returned to his Kamalanagar house. He also states that on 27-01-1996, he accompanied the testator M.N. Ranganathan to the Sub-Registrar's office and by that time the Will was ready. They went in an auto rickshaw, reached the Sub-Registrar's office at 1.30 p.m., and the registration was completed by

2.30 p.m., and returned to his home. He states that since the time of return, 'the Will was with the testator himself'. He says that he had not seen Rajagopal, the other attesting witness, signing the said Will. It is pertinent to note that if the Will was with the testator himself after he signed it in the presence of the DW2, when and where another attesting witness had signed the Will remains unexplained. Obviously, the Will Ex.D2 was with the Sub-Registrar himself till 17-07-1996. Therefore, the testimony of DW.2 is unconvincing and it cannot be a reliable testimony.

51. When it is the specific case of the plaintiffs that they were not allowed to meet the testator, who was staying in the house of DW2, defendants did not elicit from DW.2 that plaintiffs had met the testator for the purpose of inviting him for the marriage of plaintiff No.2. In order to rebut the contentions of the plaintiffs that they were not allowed to meet the testator and invite him for the marriage, it was essential for the defendants to elicit from DW.2 as to whether the testator had met plaintiffs and defendant No.4. Defendant No. 4 never entered the witness box to deny and rebut the fact stated by PW1.
52. Another circumstance that could be found is that, DW.1 says that when plaintiff was shown the copy of the Will Ex.D1, she left the house in a huff. On the other hand, DW.2 says that there was no quarrel on 12th day ceremony of the death of the testator. Therefore, there is divergence in the manner how they were in the knowledge and possession of the copy of Ex.D1 and it was put across to plaintiff No.3.
53. The defendants having propounded Ex.D1 as the last Will of the testator, had to establish the sound and disposable mind of the testator at the time of execution of the Will. There were no such efforts by them. The plaintiffs have got summoned Exhibits P5 to P8 and adduced the evidence of medical officers of the hospitals as PW.2 to PW.4. These documents show that it was plaintiff No.2 who got the testator admitted to Jayadeva Institute of Cardiology on 29-2-1995 as may be found from Ex.P7.

Ex.P8 pertains to Chord Road Hospital and it shows that defendant No.1 had taken the testator to the hospital, but DW.1 says that he does not know who had got admitted the testator to the Chord Road Hospital on 06-10-1995. Therefore, it is evident that the plaintiffs were taking care of the testator and the affinity of the testator with the plaintiffs cannot be doubted. On the other hand, exclusion of the defendants from any bequeath in the earlier Wills also gains importance and allows this Court to have a peep into the mind of the testator.

54. The reason contended by the defendants for excluding the plaintiffs from the full bequeath under Ex.D1 is that the plaintiffs had not taken proper care of the testator after 1992 and they were pestering for a Gift Deed from the testator. Though this contention was taken up by the defendants, there is absolutely no suggestion to PW.1 in this regard. There is no suggestion to PW.1 that they had neglected the testator when he needed treatment or support. The logic of the contentions of the defendants that the plaintiffs were insisting for a gift is not appealing. The plaintiffs had the Will Ex.P11 in their favour and therefore, there was no need for them to pester the testator Ranganathan for a gift deed.
55. The perusal of the Wills of testator at Exhibits P2, P9, P10 and P11 shows that he had consistently bequeathed major portion of his property to the plaintiffs and his brother M.N Shivaprakash (defendant No.10). He had never bequeathed anything either to defendant No.2 or defendants No. 3 to 9. Only in Ex.P10, he had bequeathed half of the PF amount to defendant No.1 and the remaining half to defendant No.10. Thereafter, he underwent surgery at M.S. Ramaiah Hospital in March 1992 and then he executed the Will at Ex.P11 on 30-12-1992. In both these Wills, except a small bequeath to defendant No.1 under Ex.P10, his entire estate was bequeathed to the plaintiffs. Therefore, the reason which prevailed on the testator to make the bequeath in favour of all his full blooded and half blooded siblings in equal proportions is not forthcoming in the evidence of the defendants. It was necessary to assign any such reason to instill confidence that there were reasons for change of the mind of the testator. The evidence of DW2 is not reliable as noted supra. DW.1 also has not explained how he came in possession of Ex.D1. DWs. 1 and 2 without seeking leave of the Court had inter se entered into certain transactions concerning the assets of the testator when DW.1 was appointed as a receiver for the property of the testator. Therefore, such conduct of DW.1 and DW.2 deprives them from reliability.
56. The fact that DW2 and defendant No. 2 were dominating the mind of the testator during his stay at their house is not denied. There is no such denial elicited from PW1. On the other hand the medical records at Ex P8 show that the testator was found to be inflicted with paranoid psychosis and Gynaecomastia and was treated by a psychiatrist. This also reflects that the mind of the testator was weak and vulnerable for dominance and influences. It is relevant to note that there was necessity of examination of the testator by

a psychiatrist Dr Swaminathan. This indicates the mental condition of the testator.

57. From the overall scrutiny of the evidence available on record, it is clear that the testator M.N. Ranganathan, being an Engineer at Kirlosker Electric Company Limited, was suffering from Cardiac ailments and he had underwent mitralvalvotomy at the age of 23 years in the year 1963 and then again, he underwent mitral valve replacement in the year 1992. He was a divorcee and had acquired the property at Kamalanagar, constructed a house and staying therein alone. He was being assisted by defendant No.10 who was an Orthopedic Surgeon at Government Hospital in Bangalore, who took voluntary retirement and went abroad somewhere in the year 1991. All along, since 1981 the testator had bequeathed major portion of his estate to plaintiffs and defendant No.10. There was a need for changing the conditions of bequest due to several circumstances and lastly, due to the defendant No.10 going abroad in the year 1991. The Will at Ex.P11 came to be executed on 30-12-1992. Thereafter, in the year 1995, his health deteriorated and for the purpose of treatment, he stayed in the house of defendant No.2, who was his half blooded sister. It appears that he had constructed a room on the first floor of her house and residing there.

58. The contention of the defendants is that the testator wished to bequeath his entire estate to all his brothers and sisters equally is shrouded with several suspicious circumstances. The defendants have not only dispelled these suspicious circumstances, but also on the other hand, their testimony is not found trust worthy. There are contradictions in the testimony of DW.1 and DW.2 and there is misuse of the property of the testator when DW.1 was entrusted with the same as a Receiver of the Court. Under these circumstances, it cannot be said that Ex.D1 is proved as required under law. Though the requirements of Section 68 of the Evidence Act and Section 63 of the Indian Succession Act are complied, it would not amount to a believable evidence the Apex Court in the recent judgment in **Dhani Ram(dead) through his LRs Vs Shiv Singh**¹⁵ observed that "*a Will cannot be presumed to be valid merely because is it registered and the due execution and attestation are to be established*". When the testator was unable to attend the marriage of plaintiff No.2, to whom he had bequeathed his entire estate earlier, he attending ¹⁵2023 SCC OnLine SC 1263 stamp vendor and the Sub-Registrar's office appears to be unbelievable. The testimony of DW.2 is not believable in this regard. The dominance of the defendants No. 1 and 2 and

DW.2 over the testator cannot be ignored when PW4 states that the testator was suffering paranoid psychosis.

59. The Evidence shows that DW2 being the husband of defendant No. 2, had taken active role in the execution of the Will at Ex.D1. He cannot be excluded from the purview of an interested witness, as he is also a beneficiary indirectly.

60. Thus the cumulative effect of the above major suspicious circumstances, coupled with the other discrepancies in the evidence pointed out by the learned counsels enumerated supra, show that the Will at Ex.D1 is shrouded with many suspicious circumstances, which in normal course cannot lead to an inference that the testator had bequeathed his entire estate out of his free will and volition. We are unable to fathom the reason which led the testator to change his mind to make the bequest to all his half blooded siblings, whom he had shunned in his earlier Wills, by deviating from his earlier intentions.

61. The next question would be, whether Ex.P11 has to be relied. As noted above, there is no much resistance by the defendants to Ex.P11. They have repeatedly contended that Ex.P11 was revoked by Ex.D1. Ex.D1 also refers to the Will dated 30-12-1992 in clear terms. When the defendants admit Ex.D1, it is not in their mouth to say that Ex.P11 dated 30-12-1992 is not in existence. Therefore, the defendants cannot resist Ex.P11 to be a *non-est*.

62. However, the requirements of law regarding the proof of Ex.P11 are to be considered. On the part of the plaintiffs, in order to prove Ex.P11, they have examined PW.5 -Shashikanth. He states that he was a document writer at Mayo Hall, Bangalore, and he signed Exhibits P10 and P11 as an attesting witness. These two Wills are about a year apart and he states that his father was also a deed writer and therefore, he knew the testator M.N. Ranganathan. He has withstood the cross-examination by clarifying that the script of the affidavit evidence was prepared by the counsel Satish Chandra, but the contents were told by him. Therefore, we find that the Ex.P11 has been proved to be the last and final Will of the testator Ranganathan. Obviously, the testator was residing in his Kamalanagar house and the plaintiffs have stated that they were given only the copy, but not the original. Obviously, it was DWs. 1 and 2 who had visited the house of the testator on 5th day after the death of the testator and they had found an envelop. They

do not speak of anything about originals of Exs.P10 and P11. Therefore, we find that Ex.P11 the Will dated 30-12-1992 has been established by the plaintiffs.

63. A perusal of the impugned judgment of the trial Court shows that though it considers the evidence of the witnesses, it failed to draw proper inferences and the effect of the contradictory testimonies of DWs.1 and 2. It holds that there is nothing wrong in the plaintiffs not being allowed to meet the testator by inviting him for the marriage of plaintiff No.2 and there was no dispute since the testator was ill. It holds that the signature on the Will at Ex.D2 is not shaky and the trial Court compares the signature on Ex.D1 with the admitted signatures on the letters produced by the plaintiffs at Exs.P14 and 15. It is settled principle of law that the comparison of the signatures has to be undertaken only under exceptional circumstances unless it is essential. The Court cannot venture into the domain of an Expert unless it is absolutely necessary. Therefore, the trial Court erred in entering into the domain of the Expert.

64. Further, the trial Court also holds that testator was in the habit of executing Wills and he had executed four Wills in 10 years and there is no unnatural disposition of the estate of the testator under Ex.D1. It is also relevant to note that the circumstances under which the testator had to modify his disposition under the Will has been explained by the plaintiffs. The trial Court did not feel that those explanations are to be considered. It is also to be noted that simply because the testator executed four Wills in ten years and that he was an educated person, it cannot be said that his Will as per Ex.D1 is also to be believed unless the suspicious circumstances surrounding that were dispelled by the propounders. The trial Court proceeds on the premise that the earlier Wills executed by the testator show that there is a probability of he executing another Will. This analogy does not stand for any reason. The trial Court also does not notice the testimony of DW.2 to the effect that the testator-M.N.Ranganathan had not stayed in his house prior or 1995 and holds that the testator had stayed in the house of DW.2 for about 3 months in the year 1992. The evidence of the DW.1 and 2 in this regard was contrary to each other.

65. Obviously, these inferences drawn by the trial Court are not based on the close scrutiny of the evidence on record. It failed to notice that DW.2 being the husband of defendant No.2 was a beneficiary and hence, he

had taken active part in the execution of the Will. He was an attesting witness to the Will and conspicuously, he had not seen the other attesting witness signing the Will. It is not known when the other attesting witness had signed the Will. It also failed to notice that the defendants had not explained satisfactorily as to how they came in custody of the Will when the endorsement of the Sub-Registrar showed that document Ex.D1 was registered on 17.07.1996, which was nearly after about 6 months of the presentation of the Will to the Sub-registrar. Therefore, we are of the considered opinion that the judgment of the trial Court is perverse and is not in accordance with the evidence available on record. As such, the impugned judgment is not sustainable in law. Consequently, point No.2 is answered in the Negative and the point No.3 is answered in the affirmative.

Re. Point No.4:

66. The appellants have filed the interlocutory application 1/2015 under Order XL Rule 4 of CPC seeking certain directions to the Receiver. In the affidavit filed in support of the application, it is stated that before the trial Court an application was filed in the form of IA.No.3 for Appointment of the Receiver, which came to be allowed by order dated 24.03.1999 and defendant No.1/respondent No.1 herein was appointed as a Court Receiver, he was directed to perform the following acts:

- "a. To put item No.1 of the 'A' schedule property for profitable use y letting out the same for two to three years.
- b. To deposit the amount available out of the suit schedule properties in a nationalized banks.
- c. To furnish proper accounts to the Court".

67. Thereafter, by order dated 17.01.2003 on IA.No.5, defendant No.1 was removed from the receivership for his failure to perform the duties and in his place, plaintiff No.3 was appointed as Receiver. A Miscellaneous First Appeal against the said order was dismissed by this Court on 17.11.2003. Later, it was found by plaintiff No.3 that defendant No.1 had misappropriated the amounts found in the suit schedule property and also obstructed plaintiff No.3 from acting as a Court Receiver in several manner including by not handing over all the suit schedule properties which were duly reported to the Court. Then, by order dated 29.07.2010 on IA.No.22, the trial

Court appointed Mr.R.Shivaprasad, Advocate as the Receiver. Thereafter, on 21.08.2010, plaintiff No.3 handed-over the documents and the key bunches to the Receiver-Mr.R.Shivaprasad, which was in her possession till then as a Receiver. In the beginning of 2015, the appellants/plaintiffs came to know that some strangers had occupied the suit schedule 'A' item No.1 property i.e., Kamalanagar House Property and that they are claiming to have purchased the same. After making necessary enquiries, it was found that the property belonging to the testator was sold through his GPA Holder Sri.D.K.Rangegowda to one Vinaykumar Karadi under registered sale deed dated 23.05.2011. Those documents were also obtained and produced by the appellants. Thereafter, the appellants also obtained the certified copy of the sale deed dated 23.05.2011, encumbrance certificate etc., and produced the same before this Court. Therefore, the appellants prayed that the Court may be pleased to pass appropriate orders to preserve the suit schedule properties in the interest of justice and equity.

68. The said application was heard by this Court to some extent and thereafter, it appears that a show cause notice was also issued to Sri.D.K.Rangegowda and Sri.Vinaykumar Karadi but they did not appear. Thereafter, the Receiver was directed to file an affidavit in this regard. Accordingly, the Receiver has filed his reply to the showcause notice stating that the plaintiffs had not furnished any instructions and he called upon the counsel for the plaintiffs to give a memo of instructions but the plaintiffs never obliged for the same. It was stated that the plaintiff No.3 had not handed over the keys and documents to him and it was plaintiffs Advocate, who had handed over the keys and documents. He stated that he had visited the Kamalanagar House on 05.12.2010 and only defendant No.4 was present and found that the property is in a dilapidated condition, filled with garbage and it was beyond repairs. Accordingly, he had submitted a report to the Court on 07.12.2010 with suggestion of the defendants that item No.1 of the suit schedule property be sold in public auction and the movable assets in the form of Fixed Deposits, etc have been matured long back be reinvested. He also submitted that there was no order for him when the trial Court dismissed the suit and there were no directions to him and therefore, he has stayed quiet. He also stated that there were no orders for continuing him as a Receiver and no remuneration was also paid to him and in fact, he with the assistance of defendant No.1 and the Police as well as Lokayukta, has tried to enter item No.1 property but there are two land mafia groups and they had threatened him with dire consequences. Therefore, it is stated that there is no

wilful default or gross negligence by him in discharging his duties and the Court may terminate his appointment as Court Receiver.

69. The records pertaining to the correspondence between the Court Commissioner and the parties, regarding handing over of the assets from one Court Receiver to another Court Receiver are available in record. From a perusal of the rival contentions including that of the Receiver, it appears that though there was a direction by the trial Court that the property be put to proper use and the income derived from the property has to be deposited to the Court, it was not complied either by defendant No.1 or by plaintiff No.3. Thereafter, even the receiver appointed at the instance of both sides, Sri.R.Shivaprasad also was not able to put the property for better use and deposit the proceeds into the Court. It is necessary to note that dismissal of the suit would not result in automatic termination of the receivership. The Receiver is bound to discharge his duties as a Receiver unless there is express termination of his receivership.

70. The trial Court while dismissing the suit, failed to notice that the Receiver had continued to be in possession of the schedule property. It did not direct the Receiver either to hand over the properties to the defendants or discharged the Receiver from his duties. It also did not fix the remuneration of the Receiver. Under these circumstances, an enquiry should have been held by the trial Court in this regard after hearing all the parties.

71. At this juncture, we feel it proper to notice that the provisions of Order XL Rules 1, 2, 3 and 4 (with Karnataka amendments) of CPC are very clear regarding the duties of the Receiver. The duties of the Receiver are more onerous than that of Court Commissioner. The duties of the Receiver will continue and if he fails to perform the duties, he would be personally liable to make good the loss. He acts as *custodia-legis*, i.e., holds on behalf of the Law and as an Officer of the Court. It appears that either defendant No.1 or plaintiff No.3 did not perform their duties and ultimately, Sri.R.Shivaprasad, Advocate was appointed as a Receiver. The very fact that the property is occupied by some third parties under false and concocted documents shows that proper care was not taken by the Receivers. It is evident that M.N. Ranganathan had died in the year 1996. The alleged transactions on the basis of the Power of Attorney by Rangegowda was in the year 2014.

Therefore, it is evident that on the basis of the concocted documents, some third parties had occupied the premises. The Receiver as well as the parties could have approached the Court seeking suitable directions.

72. Under these circumstances, we feel that an enquiry should be held by the trial Court, since it failed to discharge the Receiver while passing the impugned judgment. Hence, it would be proper to direct the Receiver to hand over the possession and keys of item No.1 of the suit schedule property to the plaintiffs herein. The plaintiffs are to be handed over all other properties mentioned in the Will at Ex.P11 and also the documents, fixed deposits, receipts, investment details etc within a specified time. Thereafter, an enquiry has to be held by the trial Court regarding the liabilities of defendant No.1, plaintiff No.3 and Sri.R.Shivaprasad and accounts be settled within a specified time. Hence, IA.No.1/2015 deserves to be disposed of with appropriate directions.

73. For the aforesaid reasons, the appeal deserves to be allowed and hence, the following:

ORDER

(i) The appeal is allowed with costs.

(ii) The impugned judgment dated 14-08-2012

passed by the trial Court in O.S.No.3257/1997 is hereby set aside.

(iii) The suit is decreed. The alleged Will by

Sri M.N.Ranganathan as per Ex.D1 is declared null and void.

(iv) It is declared that the Will dated 30.12.1992 executed by Sri M.N.Ranganathan registered as Document No.304/1992-93 in the office of Sub-Registrar, Shivajinagara, Bangalore, is the last Will of Sri.M.N.Ranganathan and plaintiffs No.1 and 2 have succeeded to his estate in terms of the said Will.

(v) The Court Receiver-Sri R.Shivaprasad, is directed to handover the keys, possession and other documents which are in his possession to the plaintiffs within a period of two months from today.

(vi) Both parties and the receivers shall appear before the trial Court on 01-03-2024 without any further notice.

(vii) The trial Court is hereby directed to hold enquiry as required under Order XL Rules 3 and 4 of CPC and direct the Receivers to give accounts and enforce the same as per law including recovery of possession of suit schedule item No.1 property.

(viii) The enquiry shall be completed within a period of four months from 01-03-2024.

(ix) Trial Court shall submit the compliance report to this Court within six months from 01-03-2024.

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