HIGH COURT OF ANDHRA PRADESH

Bench: Justice V. Srinivas

Date of Judgment: 16 April 2024

APPEAL SUIT NO.2993 OF 2004

T. MAHALAKSHMI AMMAL and S.R.T. RAMASWAMY …APPELLANTS

VERSUS

KRISHNAN VENKATESWARI et al. …RESPONDENTS

Legislation:

Code of Civil Procedure, 1908
Indian Succession Act, 1925

Subject: Civil appeal against trial court decision concerning property partition claims stemming from ancestral succession, with disputes over a purported will.

Headnote:

Validity of Will and Partition of Property – Civil Appeal against trial court decree in partition suit – Appeal Suit No. 2993 of 2004 – Appellants (defendants in the trial court) contested the trial court's decision granting partition of properties claiming validity of a will favoring them – Will purportedly made by S.R. Thillai Kaliyappan, distributing properties primarily to his son to the exclusion of other heirs – High Court found multiple suspicious circumstances around the will's execution and authenticity, including absence of original will, unconvincing testimony by witnesses, and the will's non-registration – No satisfactory explanation provided by propounders to dispel these suspicions – Held: Will not proved valid; properties to be partitioned equally among all legal heirs as per trial court's decree – Appeal dismissed with costs. [Paras 1-106]

Distribution of Properties – Upon evaluation of evidence and legal submissions, court affirms trial court's decision for equal partition –

Properties acquired and held by S.R. Thillai Kaliyappan to be equally divided among his legal heirs including the plaintiff and defendants numbered 1 to 4 – Held: Each party entitled to an equal share in the disputed properties. [Para 105]

Decision – High Court dismisses the appeal, affirming the trial court's judgment and decree for partition of properties – Appeal found to have no merit, with all parties to bear their own costs – Interim orders vacated, and miscellaneous petitions, if any, closed. [Para 106]

Referred Cases:

- Anil Kak v. Sharada Raje [2008] 7 SCC 695
- Bharpur Singh v. Shamsher Singh [2009] 3 SCC 687
- Jaswant Kaur v. Amrit Kaur [1997] 1 SCC 369
- B. Venkatamuni v. C.J. Ayodhya Ram Singh [2006] 13 SCC 449
- Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao [2006] 13 SCC 433
- H. Siddiqui v. A. Ramalingam [2011] 4 SCC 240
- R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple [2003] 8 SCC 752
- P.C. Purushothama Reddiar v. S. Perumal [1972] AIR SC 608
- H. Venkatachala Iyengar v. B.N. Thimmajamma [1959] AIR SC 443
- Purnima Debi v. Kumar Khagendra Narayan Deb [1962] 3 SCR 195
- Kavita Kanwar v. Pamela Mehta [2021] 11 SCC 209
- M. Chandra v. M. Thangamuthu [2010] 9 SCC 712
- Rakesh Mohindra v. Anita Beri [2016] 16 SCC 483
- Benga Behera v. Braja Kishore Nanda [2007] 9 SCC 728
- B.V. Nagesh v. H.V. Sreenivasa Murthy [2010] 13 SCC 530
- Murthy v. C. Saradambal [2022] 3 SCC 209
- Hapi Mohd. v. State of West Bengal [1959] AIR SC 98
- Bhagat Ram v. Khetu Ram [1929] AIR PC 110
- A.E.G. Carapiet v. A.Y. Derderian [1961] AIR Cal 359
- Muriel Hyden v. Dulcie M. Robb [1991] 1 AP LJ 83
- Kalyan Singh v. Chhoti [1990] 1 SCC 266
- Gopal Das v. Sri Thakur ji [1943] AIR Privy Council 83
- Rafia Sultan v. O.N.G.C. [1985] 2 GLR 1315

- Iabasappa v. Bhadrawa [1922] AIR Bombay 296
- Ajit Chandra v. Akhil Chandra [1960] AIR Calcutta 55

Representing Advocates:

For Appellants: Sri P. Rajasekhar, representing Sri E.V.V.S. Ravi Kumari
For Respondents: Sri M.V.S. Suresh Kumar, representing Sri Aravala Srinivasa Rao

JUDGMENT:

This regular appeal under Section 96 Code of Civil Procedure is directed against the decree and judgment in O.S.No.527 of 1996 dated 07.04.2004 on the file of the Court of learned I Additional Senior Civil Judge, Vijayawada.

2. The defendant Nos.1 and 2, before the trial Court, are the appellants. The respondent No.1 herein is the plaintiff and respondent Nos.2 to 21 are defendant Nos.3 to 21 before the trial Court.

3. The 1st respondent herein instituted the suit for partition and separate possession of 1/5th share of the plaint schedule property after dividing into five equal shares by meets and bounds, for past and future profits from 1993 onwards.

4. For the sake of convenience, the parties hereinafter referred as they arrayed before the trial Court.

5. Before adverting to the material and evidence on record and nature of findings in the judgment of the trial Court, it is necessary to scan through the case pleaded by the parties in their respective pleadings.

6. The case of plaintiff in brief in the plaint was as follows:

(i) 1st defendant is mother, 2nd defendant is brother and defendant Nos.3 and 4 are sisters of the plaintiff. Defendant Nos.5 to 21 are the tenants in the plaint schedule property. Originally the property was the self- acquired properties of her grand-father by name A.P.S.R.Ramswamy Nadar and he died intestate on 16.06.1964 leaving

his wife Vaduvammal, daughters Seethamahalakshmi Ammal/Kuvammal and son S.R.Thillai Kaliyappan. As such they got equal shares in the properties left by late Ramaswamy Nadar.

(ii) Subsequently, Vaduvammal died intestate.

Sisters of Thillai Kaliyappan, who is father of the plaintiff, relinquished their rights in the properties. Therefore, Kalliyappan is the absolute owner of the suit schedule property and he was in possession and enjoyment of the same till his death on 14.05.1976. He never executed any document in favour of any person during his lifetime. As such, the plaintiff is entitled 1/5th share in the plaint schedule property. She demanded the defendants for partition, but in vain. Thereby, she issued a notice on 16.08.1996. In-turn, the 1st defendant gave a reply with false allegations. Hence, filed the suit.

7. The defendant No.1 denying the allegations in the plaint except the relationship between the parties to the suit and contending in the written statement, which was adopted by the 2nd defendant by filing a memo before the trial Court, as follows:

(i) After death of Ramaswamy, his wife and children partitioned the properties under a partition deed dated 15.07.1964. In that partition, Kaliyappan got western part in item No.1 of the plaint schedule property and eastern half of the item No.1 fell to the share of his mother Vadivammal. Subsequently, Vavivammal executed a registered settlement deed dated 04.07.1966 settling the property in favour of his son Kaliyappan. Item No.2 of the suit schedule property of Ramaswamynadar was settled in favour of his son Kaliyappan through a registered settlement deed dated 17.05.1962.

(ii) Item No.3 of plaint schedule property is Ac.2.56 cents covered under R.S.No.223/1 of Gunadala Village, out of which Smt.Vadivammal got Ac.1.03 cents on the eastern side, Kaliyappan got Ac.1.03 cents on northern side, Mahalakshmi Ammal got Ac.0.25 cents on north of Kaliyappan's plot and Kuruvammal got Ac.0.25 cents on north of Mahalakshmi Ammal's plot in the said registered partition. Subsequently, Kaliyappan purchased an extent of Ac.0.78 cents from his mother Vaduvammal under a registered sale deed dated 14.11.1966.

(iii) The Kaliyappan was the absolute owner, is in possession

and enjoyment of the item Nos.1 to 3 of suit schedule property. During his lifetime, he executed a Will on 23.07.1975 in a sound and disposing state of mind with his own handwriting in his mother tongue Tamil and the said Will was attested by his close friends Sri N.Rajaraman and Sri N.P.R.Vital of Vijayawada bequeathing all his properties in favour of his son S.R.P.Ramaswamy i.e., 2nd appellant/2nd defendant, who was minor at that time. It was stipulated that "the 1st appellant/1st defendant has to maintain the properties of the 2nd appellant/2nd defendant during his minority and also to spend only Rs.500/- per month for the maintenance of 1st appellant/1st defendant and the minor son. After the 2nd appellant/2nd defendant herein become major, an amount of Rs.500/- per month should be paid by the 2nd appellant/2nd defendant to the 1st appellant/1st defendant for her personal expenditure throughout her life and with other conditions".

(iv) Kaliyappan died on 14.05.1976 and after his death as per the contents of his Will dated 23.07.1975, the 1st appellant/1st defendant has taken the possession of all the properties of late S.R.Kaliyappan on behalf of the 2nd appellant/2nd defendant and managed the same by clearing all the debts incurred by Kaliyappan during his lifetime.

(v) Kaliyappan did pulse business along with his father and continued the said business even after the death of his father. During his lifetime, he incurred some debts for the business and also stored some pulses in Central Warehouse Corporation, Vijayawada. As Kaliyappan died suddenly on 14.05.1976, the goods in the godown of Central Warehouse Corporation were released after submitting the original Will have executed by Kaliyappan. A deposit of Rs.25,000/- was made by the 1st appellant/1st defendant to get the stock released as per the condition stipulated by Central Warehouse Corporation by submitting a succession certificate, which was obtained from the II Additional District Munsif at Vijayawada in O.P.No.10 of 1981 and got released the stock under a receipt No.884048 dated 25.01.1977.

(vi) During minority of the 2nd appellant/2nd defendant, the 1st appellant/1st defendant disposed of Ac.0.78 cents covered under R.S.No.223/1 for clearing the debts incurred by Kaliyappan. The respondent No.1/plaintiff, respondent Nos.2 and 3/defendant Nos.3 and

4 had knowledge about the Will executed by Kaliyappan, but the respondent No.1/plaintiff filed the suit only to cause wrongful loss to the 2nd appellant/2nd defendant. Hence, prays to dismiss the suit.

8. The respondent No.4/defendant No.5 filed a written statement by stating that he is a tenant under 2nd appellant and he paid the rents till 31.12.1997 and the respondent No.1/plaintiff has knowledge about the said fact.

9. The respondent Nos.6 and 11/defendants Nos.7 and 12 also contending in the written statement as follows:

The 2nd appellant refused to receive the rent. Hence, they filed O.S.No.324 of 1995 against the 2nd appellant for permanent injunction directing the 2nd appellant not to interfere in their possession and they paid the rents regularly as a counterblast. The 1st respondent/plaintiff filed the suit at the instigation of the 2nd appellant. Hence, prays to dismiss the suit.

10. Defendant Nos.3 and 4/respondent Nos.2 and 3 did not file any written statement before the trial Court either to deny or support the contentions of both parties.

11. On these pleadings, the trial Court settled the following issues and additional issues for trial:

"1. Whether the plaintiff is entitled for partition and separate possession of the plaint schedule properties as prayed for?

2. Whether the relief is properly valued and the court fee paid is not correct?

3. Whether the suit against the 5th defendant is not maintainable?

4. Whether the suit is barred by limitation?

5. Whether the Will dated 23.07.1975 executed by S.R.Pillai Kaliyappan is true and valid?
6. Whether the plaintiff is entitled for mesne profits as prayed for? and

12. To what relief?" At the trial, on behalf of the respondent No.1/plaintiff, P.W.1 was examined while relying on Exs.A.1 to A.27 in support of her contentions. On behalf of the appellants/defendant Nos.1 and 2, D.Ws.1 to 4 were examined and Exs.B1 to B.20 were exhibited.

13. Basing on the material and evidence, the trial Court preliminarily decreed the suit directing partition of the plaint schedule property into five (5) equal shares by metes and bounds and allot 1/5th share each to the plaintiff and defendant Nos.1 to 4 and they also entitled for mesne profits by filing separate application.

14. It is against this decree and judgment, the appellants/defendant Nos.1 and 2 preferred this appeal.

15. Heard Sri P.Rajasekhar, learned counsel representing Sri E.V.V.S.Ravi Kumar, learned counsel for the appellants/defendant Nos.1 & 2 and Sri M.V.S.Suresh Kumar, learned Senior Counsel representing Sri Aravala Srinivasa Rao, learned counsel for the respondent No.1/plaintiff.

16. It is against this backdrop, the following points, which arise for determination need consideration now:

1. Whether the findings and reasons recorded by the trial Court in particular regarding the Will dated 23.07.1975 executed by S.R.Pillai Kaliyappan is true, valid and warrants any interference by this Court in the exercise of its appellate power and jurisdiction?
2. Whether the plaintiff is entitled for partition and separate possessions of plaint schedule property? and
3. To what relief ?

17. **POINT No.1**:

The undisputed fact is that late S.R.Thillai Kaliyappan succeeded some of the plaint schedule properties from his father and some of the properties were acquired by him with the nucleus of ancestral properties.

18. It is the specific allegation as a defense in the written statement by the defendant Nos.1 and 2 that late Kaliyappan executed original of Ex.B.19 Will in a sound and disposing state of mind in the presence of D.Ws.2 and 3 bequeathing all his properties to the 2nd defendant as well made some dispositions in the said Will, when the plaintiff seeks for partition, the propounder of the Will, has to prove the Will to the satisfaction of the Court.

19. Sri P.Rajasekhar, learned counsel representing Sri E.V.V.S.Ravi Kumar, submits in order to establish the Will and in that process, defendant Nos.1 and 2 examined attestors of the said Will as D.Ws.2 and 3 and the original of Ex.B.19 was scribed in a letter head by the late Kaliyappan, which is a Holographic Will of late Kaliyappan.

20. He further submits that the intention of late Kaliyappan was specifically stated and when there is no ambiguity, it became final after death of Kaliyappan. No tangible grounds placed on record to disbelieve Ex.B.19 Will.

21. He further submits that Ex.B.19 was marked through D.W.1; that at the time of admitting the document, no objection was taken by the plaintiff or her counsel; that the said document was marked by the trial Court as per Order 18 Rule 4(1) of C.P.C.; that since plaintiff did not raise any objection with regard to marking of document and did not invite any order from the Court on the question of admissibility, now plaintiff/respondent No.1 is debarred from raising any objection subsequent thereto; that any objection with regard to the mode of proof of the document has to be taken at the stage of marking of document at the trial under Order 18 Rule 4 of C.P.C. and if no objection is raised at that stage, it cannot be permitted to be raised at any stage subsequent thereto in the same Court or in the Court of Appeal and it is a settled law laid down by the Full Bench of this Court reported in ***Land Acquisition Officer Vijayawada Thermal Station v. Natalapati Venkata Rao***[1]. Even prior to the said Full Bench judgment of this Court, a judgment rendered by the Hon'ble Supreme Court in the year 1972 itself reported in ***P.C.Purushothama Reddiar*** **v.** ***S, Perumal*** [2],

wherein it was held that “once a document was marked as an exhibit, no objection could be taken to its admissibility later”. And also relied on ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*,[3].** Even prior to it, there is another judgment of the Hon’ble Supreme Court reported in ***Hapi Mohd.* v. *State of West Bengal***[4], wherein the APEX Court while dealing with a case of requisition of a house and compensation to be paid

[1] (1990) 3 ALT 305

[2] AIR 1972 SC 608

[3] (2003) 8 SCC 752

[4] AIR 1959 SC 98

therefor, observed that “an “award” in respect of another building could be relied upon by the Government for the purposes of the case before them and that that award could not be said to be ‘inadmissible’ in evidence. In these two cases the Hon’ble Supreme Court held that so far as the mode of proof of a document is concerned, if no objection is raised before its being marked, no objection can be raised at any stage later”. These judgments were referred to in Full Bench judgment of this Court in ***Land Acquisition Officer Vijayawada Thermal Station case*** (referred to supra). In view of the above, plaintiff is debarred from raising any such objection with regard to admissibility of Ex.B.19.

22. He further submits that late Kaliyappan executed Ex.B.19 Will on 23.07.1975 and subsequently he died on 14.05.1976 and said Kaliyappan used to do pulse business and at that time huge quantity of pulses were stored in Central Warehouse Corporation godown. Since, to get release the pulses from Central Warehouse Corporation, on the request made by the Central Warehouse Corporation, the original Will executed by the late Kaliyappan along with deposit of Rs.25,000/- by the 1st defendant was submitted as per the condition stipulated by the Central Warehouse Corporation. Since the original Will did not return and also insisted for an order from the Court of law, the defendants/appellants filed succession O.P. along with photostat copy of original of Ex.B.19 Will.

23. He further submits that “Will” said to be executed is raised from 1981 onwards in OP 10 of 81, the defendants/appellants obtained the certified copy obtained from II Additional District Munsif, Vijayawada and the same was placed before the trial Court and that when the document was marked by the defendants/appellants, plaintiff did not raise any objection in any mode.

24. He further submits that the relationship between the defendant Nos.1 and 2, plaintiff and other children was cordial and all the parties have free access to everything in their house and that they have also known all these facts. Now, the plaintiff/respondent No.1 cannot be expected to pinpoint the defendant Nos.1 and 2/appellants that the original Will is created rather fabricated as canvassed before the trial

Court as well this Court is tenable. On the other hand, they have established the existence of original Will, though the Will is dated 23.07.1975, for the first-time plaintiff raised dispute after twenty (20) years, in particularly in the year, 1996 filed the suit by questioning the Will as canvassed it was created/fabricated for the purpose of taking pulses, but not a genuine one.

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25. He further submits that while D.W.1 was in the witness box not even put a specific question regarding Will and omnibus questions were put to the witness and later contended that defendant did not prove the Will is not at all tenable. For which, he relied upon a judgment of the Hon'ble Supreme Court in ***A.E.G.Carapiet v. A.Y.Derderian***[5], in [5] AIR 1961 Cal 359 which it is specifically held that "Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all…….. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses."

26. He further contends that in a similar case held before Hon'ble Supreme Court in ***Murial Hyden v. Dulcie M. Robb***[6], in which it is argued on behalf of the appellant that "there is no evidence of even a single witness to show that the executant has signed Ex. A-1 will or that he was in a sound and disposing state of mind at the time of execution of the will. He further argued that the testator was a bachelor of good health and if so, no circumstances are brought out in evidence explaining as to why he had to think of executing a will at the ripe age of 44 years. Relying upon the latest decision of the Hon'ble Supreme Court in *Kalyan Singh* v. *Chhoti* (1990) 1 SCC 266:AIR 1990 SC 396 he argued that trustworthy and unimpeachable evidence should be produced before the court by the propounder of the will to establish the genuineness and authenticity of the will which is wanting in this case."

27. The learned counsel further argued that the plaintiff not having raised-an objection to the marking of the will while the 1st defendant was in the witness box, is now precluded from challenging the proof of

the will at a subsequent stage. The learned counsel relied upon a decision of the Privy Council in *Gopal Das* v. *Sri Thakur ji* (2) AIR 1943 Privy Council 83 which lays down that the objection as to mode of proof must be taken before the document is marked and not in the appeal for the first time. Their Lordships held that where an objection is taken about the mode of proof of a document, it is essential that it should be taken at the trial before the document is marked as an exhibit and admitted to the record and that a party cannot lie-by until the case comes before a court of appeal and then complain about the first time of the mode of proof. The document which was the subject matter of consideration by the Judicial Committee was a receipt".

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28. He further submits that Division Bench of Gujarat High Court in ***Rafia Sultan v. O.N.G.C***[7] held that "an objection about mode of proof can be waived by a party and that unless such objection is raised by the party at the earliest opportunity in the trial court such objection will be deemed to have been waived and cannot be permitted to be raised for the first time in the appeal..... While marking that document, the plaintiff did not raise any objection and the document was marked as an exhibit. Parts [7] 1985 (2) G.L.R. 1315 of that report were utilized by both sides for the purpose of their own respective eases. It is under those circumstances, their Lordships observed that it is well settled that objection about the mode of proof can be waived by a party and unless such objection is raised by the party at the earliest opportunity in the trial court, such objection will be deemed to have been waived and cannot be permitted to be raised for the first time in appeal."

29. He further submits that it is extremely improbable that a person wishing to put forward a forged will would run the risk of imitating the handwritten of the deceased-testator or get it imitated by someone else when it would be so easy to attack a forged document when it runs over a folio page.

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30. He further submits that the High Court of Bombay in ***Iabasappa v. Bhadrawa***[8] held that "on consideration of the case there is nothing improbable in the story put forward by the plaintiff therein with regard to the genuineness of the will [8] AIR 1922 Bombay 296 and that when a

Holograph Will is attacked, the probability against such a forgery being attempted is very strong. The same view is taken by a Division Bench of Calcutta High Court in *Ajit Chandra v. Akhil Chandra* AIR 1960 Calcutta 55 holding that the law makes a great presumption in favour of the genuineness of a holograph will for the very good reason that the mind of the testator in physically writing out his own will is more apparent in a holograph will than where his signature alone appears to either a typed script or to a script written by somebody else".

31. By placing the above submissions and relying on the decisions stated supra, Sri P.Rajasekhar, learned counsel representing the learned counsel for the appellants/defendant Nos.1 and 2 prays to allow the appeal.

32. As against the same, Sri M.V.S.Suresh Kumar, learned Senior Counsel representing Sri Aravala Srinivasa Rao, learned counsel for the respondent No.1/plaintiff, has relied on *Roman Catholic Mission* v. *State of Madras* [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. He further submits that when the will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question is accepted as the last Will of the testator in particularly late S.R.Thillai Kaliyappan.

33. He further submits that a recurring topic for decision in courts and there are a large number of judicial pronouncements in this subject. The party propounding the Will i.e., defendant, who is making a claim under Ex.B.19 Will over the subject property has to prove the said Will beyond all doubts.

34. He further submits that as per Section 67 of the Indian Evidence Act it should be proved that the signature of the propounder i.e., S.R.Thillai Kaliyappan is that of him and for proving such handwriting under Section 45 and 47 of Indian Evidence Act, opinion of the expert person acquainted with the handwriting of the person concerned are made relevant. Besides, Section 67 of Indian Evidence Act deals with proof of execution of document and it provides that such a document shall not be used as evidence until one attesting witnesses at least has been called for the purpose of proving its execution.

35. He further contends that unlike other documents the Will speaks from the death of the testator, and so, when it is propounded or

produced before a Court, the testator (S.R.Thillai Kaliyappan), who has already departed the world cannot say whether it is his Will or not, and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of S.R.Thillai Kaliyappan.

36. He further submits that without any evidence in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law. Thus, the onus on the propounder has to be discharged on proof of the essential facts. The evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the Will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the Will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases, 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.

37. He further submits that there is no hard-and-fast rule or inflexible rules that can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the Will has to prove the due and valid execution of the Will and that if there are any suspicious circumstances surrounding the execution of the Will, the propounder must remove the said suspicions from the mind of the Court by adducing cogent and satisfactory evidence.

38. Learned Senior further submits that at any point of time, the original of Ex.B.19 Will did not see the day of the light nor produced before any Court of law, which creates any amount of doubt.

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39. In this context, learned Senior Counsel relied upon a three-judge Bench decision of Hon'ble Supreme Court in ***H.Venkatachala Iyengar v. B.N.Thimmajamma***[9], in which it is held "traversed through the vistas of the issues related with execution and proof of Will and enunciated a few fundamental guiding principles that have consistently been followed and applied in almost all the cases involving in such issues". The said judgment is also followed in another judgment of the Hon'ble Supreme Court in ***Purnima Debi v. Kumar Khagendra Narayan Deb***[10], wherein it was observed that "the mode of proving a will did not ordinarily

AIR 1959 SC 443 equivalent to 1959 Supp (1) SCR 426

10 (1962) 3 SCR 195

differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine".

40. He also submits that even if the plaintiff did not take a plea of undue influence, fraud or coercion, but the circumstances gave rise as to the doubts, it was for the propounder to satisfy the conscience of the Court. All the legitimate suspicious circumstances should be completely removed to accept that it is the last Will of the testator.

41. Learned Senior Counsel further submits that when the entire Will is in Tamil, one of the attesting witnesses, who was examined on behalf of the defendant categorically testified in his evidence that he could not read and write Tamil, he cannot say what was written in Ex.B.19 Will.

42. He further submits that during cross examination,

D.W.2 by name Narayanan Rajaraman testified that Thillai Kaliyappan is a self-made man and said Kaliyappan has knowledge how to write a document. But on perusal of the Will except stating about maintenance to defendant No.1 and after defendant No.2 become major, he became sole owner, nothing was mentioned regarding things like other children and other properties in the said Will.

43. He further submits that D.W.1 testified that Kaliyappan had a flour mill and the same is said to be maintained by D.W.1 and she has been residing in item No.1. Besides that, he did pipes business under the name and style of APSR Agency. But nothing mentioned in the Will about the said details of the business or the properties.

44. He further submits that there is no consistency in the case of

defendant Nos.1 and 2 regarding the Will. Ex.A.22 notice issued by defendant Nos.1 and 2 is totally silent regarding misplacement of the original of Ex.B.19 Will and not tracing the same. Coming to the written statement, it is averred that S.R.T.Kaliyappan died intestate on 14.05.1976 and to release the goods from Central Warehouse Corporation, Vijayawada submitted the original of Ex.B.19 Will and also averred a defense at paragraph No.10 of the written statement that plaintiff and defendant Nos.3 and 4 should have got hold the original Will executed by late S.R.T.Kaliyappan and might now in possession of the said Will.

45. He further submits that when defendant Nos.1 and 2 addressed a letter to the Regional Director, Central Warehouse Corporation covered under Ex.B.5, they did not speak that Kalliyappan executed original of Ex.B.19 Will, if really the said Will is in existence by then, they ought to have made a mentioned in Ex.B.5 about original of Ex.B.19 Will. Apart from, about five or six years after death of husband, she came to know that the original Will was misplaced. Thus, in the written statement, she has averred that Will might be in possession of plaintiff, defendant Nos.3 and 4 and during cross examination, she testified that about five or six years after death of her husband roughly around 1980 or 1981 she lost the original Will. At that time, it is not taken a defense that Will was said to be taken by plaintiff or defendant Nos.3 and 4. It gives any amount of doubt regarding the existence of the alleged Will. Simply because while D.W.1 and D.W.2 was in the witness box did not raise such defense; it does not mean to say defendants proved the genuineness of the said Will.

46. He further submits that no doubt, it is settled law that mere exclusion of the natural heirs or giving of a less share to them by itself will not be considered as a suspicious circumstance. But the duty caste upon the Court while dealing with a case based upon a Will has been examined in considerable detail by relying upon several pronouncements made by the Apex Court.

47. In this context, learned Senior Court relied upon a judgment of the Hon'ble Supreme Court in ***Kavita Kanwar v. Pamela Mehta***[11], wherein it was held that "a will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person

intends his property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust

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48. Learned Senior Counsel further submits that even where there are no such circumstances give rise to doubts, it [11] (2021) 11 SCC 209

is for the propounder i.e., defendant Nos.1 and 2 to satisfy the conscience of the Court and it should be explained by the propounder as to the genuineness of the document, condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of the above relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free.

49. With the above submissions and by relying on the decisions stated supra, Sri M.V.S.Suresh Kumar, learned Senior Counsel representing Sri Aravala Srinivasa Rao, learned counsel for the respondent No.1/plaintiff prays to dismiss the appeal with costs.

50. In the backdrop of the above submissions made by the learned counsel on both sides, this Court perused the entire material on record. While dealing with the fist appeal, the Hon'ble Supreme Court in ***B.V.Nagesh v. H.V.Sreenivasa Murthy***[12], held that "the appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate court".

51. The Apex Court further held that "sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings."

52. In a recent judgment of the Hon'ble Supreme Court in ***Murthy v. C.Saradambal***[13], it was held that "it is also necessary to observe that the right to appeal is a creature of statute. The right to file an appeal by an unsuccessful party assailing the judgment of the original court is a valuable right and hence a duty is cast on the appellate court to

adjudicate a first appeal both on questions of fact and applicable law. Hence, the re-appreciation of evidence in light of the contentions raised by the respective parties and judicial precedent and the law applicable to the cases have to be conscientiously dealt with."

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53. In this context it is relevant to make a mention that admittedly, the original of Ex.B.19 Will is not placed on record at any point of time before any Court of law. In ***Benga Behera v. Braja Kishore Nanda***[14], wherein the Apex Court held that "in case of loss of original, it was obligatory on the

13 (2022) 3 SCC 209

14 (2007) 9 SCC 728

part of the first respondent to establish the loss of the original will beyond all reasonable doubt.

54. In the said judgment it was also held at paragraph No.33 that "furthermore, secondary evidence, inter alia, could be led by production of a certified copy given in terms of the provisions of the Registration Act. In support of the proof of the will, purported Xerox copy and a certified copy thereof have been produced. In the xerox copy, an endorsement has been made by an advocate that the executant was his client and it was written by his clerk in his office on his dictation, whereas in the certified copy there is no such endorsement of the advocate".

55. Before further dwelling with the fact, it is also necessary to refer a judgment of Hon'ble Supreme Court in **Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao**[15], wherein it was held at paragraph No.33 that "the burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any……"

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15 (2006) 13 SCC 433

56.

57. As well in the same judgment at paragraph Nos.36 and 37 held that "the proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion

and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion."

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58. Learned Senior Counsel Sri M.V.S.Suresh Kumar, appearing for the 1st respondent/plaintiff relied upon a judgment of the Hon'ble Supreme Court in ***H.Siddiqui v. A.Ramalingam***[16], wherein at paragraph No.12 held that "the provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law.

16 (2011) 4 SCC 240

59. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon".

60. In the above backdrop, it is to be seen by this Court i).Whether any factual foundation been laid for giving secondary evidence; ii).The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original; iii).Mere admission of a document in evidence does amount to its proof and lastly iv).The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

61. May be true in ***Natalapati Venkata Rao case and R.V.E. Venkatachala Gounder*** (referred to supra) it was observed by the

Hon'ble Supreme Court and this Court that so far as the mode of proof of a document is concerned, if no objection is raised before its being marked no objection can be raised at any stage later, in which relied upon judgments of the Hon'ble Supreme Court in ***Hapi Mohd.*** **v.** ***State of West Bengal***[17] and ***P.C.Purushothama Reddiar*** **v.** ***S.Perumal***[18] , wherein it was held that once a document was marked as an exhibit no objection could be taken to its admissibility later. Even the Hon'ble Supreme Court also relying on the Privy Council judgment in ***Bhagat Ram v. Khetu Ram***[19], in which it was held that "it must, however, be noted that the word 'admissibility' is used in the above two cases in a general sense and not in the sense of [17] AIR 1959 SC 98 [18] AIR 1972 SC 608 [19] AIR 1929 PC 110 'admissibility' in the context of any special law like the Registration Act, Stamp Act etc."

62. In the present case, before the trial Court the plaintiff has subsequently denied the alleged Will and called upon the defendant to prove its execution. In this context it is an useful reference to the observations made in the judgment of Hon'ble Supreme Court in ***H.Siddiqui case*** (referred to supra) that the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value and held at paragraph No.14 as follows:

"14. In our humble opinion, the trial court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value."

63. It is also relevant to state another judgment of the Hon'ble Supreme Court in ***Rakesh Mohindra v. Anita Beri***[20], wherein at paragraph No.20 held as follows:

"20. It is well settled that if a party wishes to lead secondary evidence, the court is obliged to examine the probative value of the document produced in the court or its contents and decide the question of admissibility of a document in secondary evidence. At the same time, the

party has to lay down the factual foundation to establish

the right to give secondary evidence where the original document cannot be produced. It is equally well settled
that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law."

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20 (2016) 16 SCC 483

64. From the above, it is very clear that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

65. In this connection, another legal position required to be noted in a judgment of the Hon'ble Supreme Court in ***M.Chandra v. M.Thangamuthu***[21], wherein at paragraph No.47 held as follows:

"47. ……It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence

21 (2010) 9 SCC 712

must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original "

66. In the present case, as could be seen from Ex.B.19 coupled with testimony of D.Ws.1 to 3 whether there is any foundational evidence placed on record to say Ex.B.19 is the authenticated copy of so-called Holographic Will.

67. May be true while P.W.1 was in the witness box, during cross examination, a note book and exercise book covered under Exs.B.1 and 2 are marked and Ex.B.2 contains around fourteen (14) pages and since both the documents are in Tamil, at the instance of both the learned counsel, after obtaining consent, this Court sent the original of

Exs.B.1 and
B.2 to the VIT University to translate the same into English from Tamil and this Court received the translated copies of Exs.B.1 and B.2 from the said university.

68. The relevant portion of Ex.B.2 is confronted with P.W.1 that the writings are in the handwriting of her husband and in particularly at page No.12 there is a mention that “Will and letters are in possession of Hyderabad Warehouse Corporation as listed below” and the same was marked as Ex.B.3.

69. In this connection, it is relevant to state that admittedly the husband of P.W.1 was not summoned by defendant Nos.1 and 2 to say that in Ex.B.3, Will word is referred regarding the same Will as that of Ex.B.19.

70. It is the specific case of D.W.1 that Central Warehouse Corporation addressed a letter to her to take away the original Will. At one stretch she says that she received back the original Will and at another stretch she says that she did not remember when she took back the original Will. But, admitted that Central Warehouse Corporation addressed a letter dated 20.01.1977 to take back the original Will. If really she had taken back that Will, she would have summoned the Central Warehouse Corporation authorities when they had returned the original Will and D.W.1 has to state when it was lost and how it was lost.

71. Even when Succession O.P. filed before the District Munsiff, Vijayawada *vide* O.P.No.10 of 1981, in that O.P. also, only photostat copy of the Will alone filed. Nowhere, it is stated that the original Will dated 23.07.1975 was lost and thereby she filed the photostat copy of the same. Even by the year 1981, if the original Will was lost, she would have stated the same in that O.P. covered under Ex.B.13 that the original of Ex.B.19 was lost. But she did not state so.

72. As already stated above, the secondary evidence that is Ex.B.19 must be authenticated by foundational evidence that the alleged copy of Ex.B.19 is in fact a true copy of the original, but that is absent in the present case. Normal rule is ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (*i*) an objection that the document which

is sought to be proved is itself inadmissible in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.

73. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision.

74. In the present case, it is beneficial to refer the judgment ***H.Siddiqui case*** (referred to supra), the Hon'ble Supreme Court categorically held that "the trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof, cautioned the Courts should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value and that the Court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon."

75. So, the principle laid down in ***Natalapati Venkata Rao case*** (referred to supra), which is a Full-Bench judgment and ***P.C.Purushothama Reddiar case*** (referred to supra), which is also judgment of the Hon'ble Supreme Court, is correct preposition, but, coming to the facts of the present case is concerned is a different circumstance, as in-order to rely upon such secondary evidence like ExB19, the defendant must place foundational evidence that Ex.B.19 is in-fact a true copy of the original Will. But no single word uttered either in the reply notice, written statement nor in the evidence of D.Ws.1 to 3 that Ex.B.19 is the true copy of the original Will, dated 23.07.1975.

76. This Court also accepted the law laid down in ***Natalapati Venkata Rao case*** (referred to supra), however, in-order to rely upon such secondary evidence, the Hon'ble Supreme Court categorically observed that "the parties who wanted to rely upon such secondary evidence, must place foundational facts for the loss of original and until the non- production of the original is accounted for, so as to bring it within one or other of the cases provided under Section 65 of the Evidence Act."

77. In the present case, plaintiff denied the Will covered under Ex.B.19. Admittedly, admission of the document does not amount to proof of it and it is required to be proved in accordance with law in

particular, more on the propounder.

78. While the matter stood thus, the other facts, which are required to be noted down is as per Ex.B.2 at page No.1 documents in Indian Bank related to Garden, Mill, Opposite House and Savings Bank Accounts. At one page of Ex.B.2, in particular page No.9, land ceiling documents are in possession of Varadharajan. Why this discussion is, D.W.2 who is one of the attestor on the Will by name Narayanan Rajaraman testified during cross examination that Thillai Kaliyappan is a self-made man and he had knowledge how to write a document. If that statement is taken into consideration why said Kaliyappan did not refer to any of his properties like land ceiling documents, Bank documents etc. in Ex.B.19 Will. Admittedly, Ex.B.19 said to be written on letter head of said Kaliyappan business organization. It hardly contains four (4) paragraphs in one and half page. May be true, Ex.B.19 can be qualified as Holographic Will and it extremely improbable for a person wishing to put forward a forged will would run the risk of imitating the handwriting of the deceased-testator or get it imitated by someone else when it would be so easy to attack a forged document when it runs over a folio page.

79. No doubt, it is settled law that law makes a great presumption in favour of the genuineness of a holograph Will. But, admittedly, in the present case, the original of such holograph Will is not placed either before this Court or before the Munsif Court in the year, 1981 or in other court of law.

80. Normally, it is very difficult to disbelieve the holographic Will, but, in present case on hand, since the original of holographic Will is not placed on record and same is accounted by the propounder for the loss of the original Will. These two things give suspicion regarding the Will in question.

81. Admittedly, Will is a comprehensive admissible document and no doubt D.Ws.2 and 3 examined and as per D.Ws.2 and 3, executants S.R.Pillai Kaliyappan is a well versed person. One more interesting aspect, which should be brought out on the record, that while filing O.P.No.10 of 1981 neither the plaintiff nor defendant Nos.3 and 4 are parties. It is not explained why plaintiff, defendant Nos.3 and 4 were not shown as parties.

82. One more instance, which could be noticed when defendant

Nos.1 and 2 produced the original Will before Warehouse Corporation, but Warehouse Corporation categorically stated in Ex.B.8 that the original Will is not executed by the deceased either on the stamp paper or it is registered, they cannot release the stock and also directed defendant Nos.1 and 2 to arrange Bank Guarantee and also directed him to publish a notification.

83. As per Ex.B.10 a News item was published in Andhra Pathrika local News Paper and as per Ex.B.11 copy of the notice to be published in Telugu Daily Andhra Pathrika and the same may be published in one day on 25.01.1997. So, the publication might be also filed and the same is release for stocks, but the said publication is also not placed on record.

84. Now, the other claim with regard to the contents of Ex.B.19 Will are concerned, D.W.3 by name N.P.R.Vittal in the chief examination testified that he visited the house of Kaliyappan on 23.07.1975. After some time, Narayana Raja(DW2) also attended to the house of Kaliyappan. He further testified in the chief examination that in his presence and in the presence of Narayana Raja, S.R.Thillai Kaliyappan drafted a Will in his own hand on a letter head of his business organization. Kaliyappan asked him and Narayana Raja to attest the Will, since they have seen him writing the Will and putting his signature. Both of them accepted the same. At first, he signed as an attestor and thereafter Narayanan Raja signed on the said Will as a second attestor. Then, Kaliyappan placed the said handwritten Will in a cover and took into his house.

85. One more interesting aspect in the chief examination of D.W.3 is that he was informed by D.W.1 about the loss of original Will after it was sent to Central Warehouse Corporation. Whereas D.W.1 testified that she had taken back the original Will, but informed to DW3 that it was lost and she accounted for as already stated supra. Whereas D.W.3 also stated that he was informed about the loss of original Will after it was sent to Central Warehouse Corporation. It is totally contra to the statement made by D.W.1.

86. One more interesting aspect from this witness (D.W.3) during cross examination is that “he cannot read Tamil; he cannot read Ex.B.19 and he cannot say the contents in Ex.B.19”. He also admits that “Ex.B.19 does not contain that the contents therein are read over to him”. He has further stated in the cross examination that “he has no

family friendship between him and Kaliyappan" and "he had acquaintance with him only through South India Cultural Association".

87. The DW3 in the chief examination that S.R.Thillai Kaliyappan drafted a Will in his own hand on a letter head of his business organization, Kaliyappan asked him and Narayana Raja to attest the Will, since they have seen him writing the Will and putting his signature, since they have seen him writing the Will and putting his signature, both of them accepted and attested the same. Coming to the cross examination he categorically stated that he cannot read Tamil; he cannot read Ex.B.19 and he cannot say the contents in Ex.B.19. Then how he has stated the attested document is a will is thousand dollars question.

88. When D.W.3 is totally stranger to the family of Kaliyappan and who does not know Tamil, why and how said Kaliyappan obtained the signature of D.W.3 as an attestor is also another suspicious circumstance to accept it as it is original Will and rely upon Ex.B.19 photostat copy.

89. Another important admission made by D.W.3 is that "after death of defendant No.1's husband (Kaliyappan), he has visiting terms with defendant Nos.1 and 2 and vice- versa". Thus, it goes to show that he is an interested witness. It again goes to show another doubtful rather suspicious circumstance regarding the genuineness of Ex.B.19.

90. Coming to the testimony of D.W.2 by name Narayana Raja @ N.Rajaraman, who is also similarly stated as that of D.W.3 in the chief examination. In Ex.B.19 his name is mentioned as N.Raja maybe it is Narayana Raja. The rest of the chief examination is almost all similar to that of D.W.3 including he was informed by D.W.1 about the loss of original after it was sent to Central Warehouse Corporation.

91. D.W.2 during cross examination categorically testified that Kaliyappan has knowledge how to write a document and by the date of death there was deposit of Rs.25,000/- in the name of Kaliyappan in Central Warehouse Corporation and by the date of death of Kaliyappan, defendant No.2 was aged about twelve (12) years. He categorically admitted that he never advised defendant No.1 after death of her husband to maintain their business transactions or her family affairs because they never approached him seeking any advice. He also categorically testified that he does not know why Kaliyappan executed

the original of Ex.B.19 Will. By the date of Ex.B.19, he was hale and healthy and further testified that Kaliyappan never discussed about his business affairs and family affairs with him prior to his death. Furthermore, he does not know the total properties of Kaliyappan.

92. When Kaliyappan never discussed with regard to family affairs or properties either with D.W.2 or D.W.3, then why and for what reasons, Kaliyappan calling them(DW2 and3) as attestors is also another doubtful circumstance. One common statement made by D.Ws.2 and 3 during cross examination is that the 2nd defendant is visiting their house and vice versa after death Kaliappan. So, it all goes to show that D.Ws.2 and 3 are nothing but interested towards defendant No.2 and they do not know why, how and for what reason Kaliyappan executed the so called Holographic Will and they said in the chief examination itself that original of Ex.B.19 was lost while sent to Central Warehouse Corporation. As could be seen from Ex.B.19, immediately after attaining the age of majority, defendant No.2 became owner of all the properties. So, appellants/defendant Nos.1 and 2 has to clear up all the doubts rather suspicion on the original of Ex.B.19.

93. At this point of time, it is relevant to note the testimony of D.W.4, who is one of the daughter of deceased S.R.Thillai Kaliappan. She testified in the chief examination itself that her father S.R.Thillai Kaliappan executed a Will in a sound and disposing state of mind in Tamil on 23.07.1975 and bequeathed all the properties to her only brother S.R.T.Ramaswamy and she has knowledge about the execution of the same by her father. She also testified during cross examination that after the death of her father she never asked defendant Nos.1 and 2 to give her share out of the properties of her father. But, during cross examination, she categorically testified that she got issued Ex.A.25 registered notice, dated 17.08.1996 through her advocate S.Ramesh from Madurai to the plaintiff, defendant Nos.1, 2 and 4. She went to an extent to say that she do not remember the contents mentioned in the said notice.

94. But, on perusal of Ex.A.25, it is categorically stated at paragraph No.5 of the said notice as follows:

“My clients have waited long enough. My clients make their request for partition. My clients now learnt that No.1 of you stated that some kind of Will stated to have been executed by Thiru.S.R.Thillay Kaliyappan Nadar to claim for yourself for larger share and have mind

for peaceful partition. My client deny the truth of the Will".

95. The said Ex.A.25 notice was issued even prior to the filing of the suit by seeking partition of the properties and totally denied execution of Ex.B.19 Will. But, surprisingly D.W.4 admitted the said notice, but testified totally contra to her earlier version, which shows that she had hand-in-glove to the defendant Nos.1 and 2 that is the reason she testified that 2nd defendant financially helped at the time of her daughter's marriage and her son's marriage as well as whenever necessary for her. As such, she supported the alleged Will even though she denied the same in her earlier version. The contents in Ex.A.25 notice issued by D.W.4 totally denying the execution of Ex.B.19 Will even before filing the suit and her testimony before the trial Court by supporting the Will itself creates any amount of suspicion over the genuineness of the said document.

96. As already stated supra since Kaliyappan is a very wise and businessman, if really intended to execute a Will bequeathing all the properties only to his son, he would have mentioned the details of the same in original of Ex.B.19 Will in detail. Even according to D.W.1 there were no disputes between the family members, because, as per the case of defendant Nos.1 and 2, the husband of plaintiff used to maintain books relating to the affairs of Kaliyappan. As already stated supra in O.P.No.10 of 1981, it was not stated that the original of Ex.B.19 was lost. Reading together all, discloses any amount of doubt regarding the genuineness of Ex.B.19 Will.

97. Nextly, this Court should be seen whether Ex.B.19 said to be proved in accordance with law. A Will may have certain features and may have been executed in certain circumstances, which may not also appear to be somewhat unnatural. Some unusual features appearing in a Will or the unnatural circumstances surrounding its execution Will definitely justify close scrutiny before the same can be accepted.

98. In ***Anil Kak* v. *Sharada Raje***[22], the Hon'ble Supreme Court opined that opined that "the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role."

99. In ***B.Venkatamuni* v. *C.J.Ayodhya Ram Singh***[23], wherein the Hon'ble Supreme Court held that "the court must satisfy its conscience as regards due execution of the will by the testator and the court would

not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved."

100. Admittedly, in this case also, the condition of the mind of the Kaliyappan was not established showing which circumstances necessitate him to execute such a Will. Furthermore, it appears to be unnatural.

101. Now, it is required to refer one more important celebrated judgment of the Hon'ble Supreme Court in ***Bharpur Singh* v. *Shamsher Singh*[24]**, wherein at paragraph No.23 held as follows:

"*23*. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts."

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24 (2009) 3 SCC 687

102. It goes to show that defendant Nos.1 and 2 did not establish either condition of testator's mind or disposition is unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

103. In this context it is a useful reference to a judgment of the Hon'ble Supreme Court in ***Jaswant Kaur* v. *Amrit Kaur*[25]**, in which it was held

that “whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

104. In the present case, as stated supra several unnatural and unreliable circumstances were placed on record, which goes any amount of suspicion over the alleged Will.

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[25] (1977) 1 SCC 369

105. For all these reasons, this Court is of the considered opinion that the defendant Nos.1 and 2/appellants could not able to establish that the original of Ex.B.19 Will as a genuine, true and valid. So, it does not bind on the parties.

106. So far as other point i.e., with regard to entitlement of the partition is concerned. Admittedly, there is no dispute with regard to ownership of properties by Kaliyappan. When there is no dispute about the testament of Kaliyappan, the properties in the hands of Kaliyappan shall be distributed among the wife, son and daughters and trial Court has also considered the view that after death of Ramaswamy Nadar (father of Kaliyappan), his wife, son and daughters partitioned the properties. In which Kaliyappan got 1/4th share out of Ramaswamy property. Wife of Ramaswamy Nadar and two daughters get 1/4th share each. Thereafter, his mother and sisters relinquished their properties to Kaliyappan. Therefore, the entire property, which is suit schedule property belongs to Kaliyappan and since Kaliyappan died, the plaintiff, defendants Nos.1 to 4 are entitled for equal shares.

107. Having regard to the above discussion, this Court after duly evaluating the facts and law is of the considered opinion that there is no misreading of proposition of law or facts by the trial Court. Thereby, this Court does not find any grounds to interfere with the well-articulated judgment and decree of the trial Court. Therefore, there are no merits in this appeal and as such the same is liable to be dismissed.

108. In the result, the appeal is dismissed with costs by confirming the decree and judgment dated 07.04.2004 in O.S.No.527 of 1996 on the file of the Court of learned I Additional Senior Civil Judge at Vijayawada. Interim orders granted earlier if any, stand vacated. Miscellaneous

petitions pending if any, stand closed.