

(2013) 06 KL CK 0085
In the High Court Of Kerala
Case No : A.F.A. No. 47 of 2002

Gopalan

APPELLANT

Vs

Chandri

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

Evidence Act, 1872 — Section 67, 68
Succession Act, 1925 — Section 45, 47, 59, 63, 70

Citation : (2013) 3 KLT 69

Hon'ble Judges : Thottathil B. Radhakrishnan, J; B. Kemal Pasha, J

Bench : Division Bench

Advocate : B. Krishnan and R. Parthasarathy, for the Appellant; S.V. Balakrishna Iyer, P.R. Venketesh, N.L. Krishnamoorthy, K. Lakshmi Narayanan, D. Anil Kumar, K.C. Chacko, P.B. Krishnan and R.K. Muraleedharan, for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J.—Is it the duty of the propounder of a Will to prove its genuineness and to dispel suspicious circumstances, if any, surrounding its execution, even when the adverse party does not specifically deny the existence of the Will, and even when admits its existence? Can the doctrine of dependent relative revocation absolve the burden of the propounder of the earlier Will from proving its genuineness or its due execution, or to dispel the suspicious circumstance, surrounding its execution? By propounding Ext. A1 Will dated 24.1.1989 allegedly executed by two sisters, namely, deceased Mathu and Paru, the plaintiff has forwarded a claim for partition of the property covered by Ext. A1, after the death of Mathu and during the life time of Paru, who is the first defendant. Mathu died on 2.9.1991, thereby the plaintiff, based on Ext. A1 Will claims half share over the property on the averment that the bequest through Ext. A1 joint Will to the extent it relates to the disposition by Mathu has taken effect on her death.

2. The first defendant Paru has contended that Ext. A1 Will has not come into

operation as it stood revoked through the execution of Ext. B1 joint and mutual Will dated 15.5.1991 by Mathu and herself. It was also contended that a portion of the scheduled property having an extent of 10 cents was gifted by Mathu and herself to the 2nd defendant through Ext. B2 settlement deed dated 30.4.1991. Inter alia, it was also contended that Ext. A1 Will was fraudulently obtained by the plaintiff.

3. The plaintiff averred that Mathu died after prolonged illness, on 2.9.1991 and she had a flaccid mental faculty for about six months before her death. Even though the plaintiff has not revealed anything regarding the execution of Ext. B1 Will dated 15.5.1991, it seems that the aforesaid averment was deliberately made by eying on the execution of Ext. B1 by the testatrices, in order to bring out a suspicious circumstance in the execution of Ext. B1. Even when the written statement was filed by the first defendant on 25.11.1991, the plaint was belatedly amended through order dated 5.9.1992 in I.A. No. 1142 of 1992 by incorporating Paragraph No. 6A in the plaint and impleading the 2nd defendant who is the donee in Ext. B2. Paragraph No. 6A of the plaint reads as follows:

2nd defendant is said to be a donee of a section of the property by gift dated 30.4.1991. The plaintiff denies the right of the 2nd defendant over any section of the plaint property and will deliver additional pleadings after seeing D2's pleadings.

4. It seems that the 2nd defendant has filed his written statement on 16.10.1992. However, the plaintiff has not cared to deliver any additional pleadings as averred in Paragraph No. 6A of the plaint. It seems that there is no challenge with regard to the execution of Ext. B2, or its genuineness.

5. After a full fledged trial, the learned Sub Judge dismissed the suit. The appeal filed by the appellant was also dismissed by the learned single Judge of this Court, by upholding the findings entered by the trial Court. The learned counsel for the appellant has argued that the execution of Ext. B1 is shrouded in suspicious circumstances, and deceased Mathu who was the co-testatrix of the first defendant had no mental ability to exercise any free will at the time of the execution of Ext. B1. According to the learned counsel for the appellant, the first defendant has failed to dispel the suspicious circumstance surrounding the execution of Ext. B1, thereby the bequest through Ext. B1 fails, and on such failure, Ext. A1 revives through the doctrine of dependent relative revocation.

6. It remains a mystery as to how Ext. A1 was marked by the trial court. The records do not reveal the examination of any of the attesting witnesses to prove Ext. A1. As pointed out by the learned single Judge, any of the attesting witnesses to Ext. A1 was not examined to prove the execution of Ext. A1. Even the plaintiff has not cared to mount the box to speak anything regarding the execution of Ext. A1. It seems that nothing has been pleaded regarding the existence of any suspicious circumstance in the execution of Ext. B1. It is true that it is for the propounder to prove the due execution of the Will, the

genuineness of its contents and also to dispel the suspicious circumstances, if any, existing in the execution of the Will. In such a circumstance, the argument forwarded by the learned counsel for the appellant that the genuineness of Ext. B1 has to be proved by the first defendant who propounded Ext. B1 even in the absence of any denial of execution, has only to be accepted. At the same time, the said argument forwarded by the learned counsel for the appellant is a double edged weapon so far as the claim of the plaintiff relating to Ext. A1 is concerned.

7. PW 1, doctor who is a Post Graduate in General Medicine who was working at Janatha Hospital, Vadakara, was examined. According to him, Ext. X1 is the case sheet relating to the medical treatments of Mathu. Ext. X1 shows that Mathu was admitted at Janatha Hospital on 20.1.1990 on account of hypertension, and was discharged on 21.1.1990 on her blood pressure becoming stable and normal. On 28.8.1991, she was again admitted at the hospital and was discharged on 31.8.1991. According to PW 1, in the column meant for diagnosis in Ext. X1 when Mathu was admitted on 28.8.1991, he had noted his diagnosis as "CCF". It is a short term for "congestive cardiac failure". It is a case wherein the heart is not pumping blood properly. According to PW 1, at the time when the patient was brought on 28.8.1991, she was having difficulty in breathing and she required assistance to walk. She was having mild systolic hypertension. On account of pumping failure he administered the medicine required to relieve the difficulty in breathing on accumulation of fluids in lungs. On 31.8.1991 at the time of discharge, she was referred to PW 2, Ophthalmologist of the same hospital.

8. It seems that the prescription dated 15.5.1991 has been inserted among the records in Ext. X1. The said prescription was in favour of Mathu, by which certain medicines were prescribed. Evidently, such a prescription was for enabling Mathu to purchase medicines. According to PW 1, Mathu had come to him on 15.5.1991, and at that time also she had the same chronic "congestive cardiac failure". At the same time, the said prescription which has been inserted among the case sheet does not reveal any diagnosis as "CCF" or "congestive cardiac failure".

9. In cross-examination, PW 1 has deposed that the case sheet is for the period from 28.8.1991 to 31.8.1991, and that he does not know how the said prescription got in Ext. X1 file, as prescription is usually being given to the patient. He admitted that the said prescription does not contain any diagnosis, and that from the prescription he cannot say what was the pulse rate, blood pressure etc. The case sheet for the period from 28.8.1991 to 31.8.1991 show the name of the doctor who treated Mathu as "Dr. U.K." Evidently it is meant for PW 1, whose name is Dr. P. Unnikrishnan. It was PW 1 who had attended Mathu during the period from 28.8.1991 to 31.8.1991. PW 1 has clearly deposed in cross-examination that he had examined the patient for the first time on 28.8.1991. According to him, if he had not seen the patient on 15.5.1991, he would not have given the prescription. He does not remember the patient in the prescription and he cannot say if the Mathu in the said prescription and the

Mathu who was admitted at the hospital, is the same person. He has clearly deposed that he did not know the previous history of Mathu and nor did he remember it. The prescription dated 15.5.1991 does not show the time at which the patient came to the doctor.

10. On a careful scrutiny of Ext. X1 it seems that page No. 1 of the case sheet dated 28.8.1991 shows the I.P. No. of the Mathu as "3071". At the same time, page No. 3 shows the I.P. No. as "3087" and the name of the patient as Sabira. It seems that the said page No. 3 is subsequently inserted among the case records, in order to make it appear that the patient had a complaint of "dimness of vision" at the time of her discharge on 31.9.1991. The entries relating to the medicines prescribed are in a different ink. The two entries regarding the alleged complaint of the patient regarding the "dimness of vision" and the reference made to Dr. Padma are in another ink. It seems that "C/O Dimness of vision to see Dr. Padma" are made subsequently. It is evident that Ext. X1 case sheet is a manipulated one and the same cannot be relied on for any purpose.

11. Similar is the case with the examination of PW 2, Ophthalmologist. In cross-examination, she had deposed that it was on account of complaint regarding "dimness of vision", that she had examined the patient. According to her, she did not ask the patient as to when exactly the patient was having complaint of "dimness of vision". According to PW 2, the patient was able to see with the left eye within four metres of distance. The patient was examined by her as inpatient No. 3087 of the Janatha Hospital.

12. The appellant cannot have a case that Mathu had any lack of vision on 25.5.1991, the date on which Ext. A1 was registered. As the execution and registration of Ext. B2 is not under challenge, the appellant cannot have a case that Mathu had no vision on 30.4.1991, the date of execution of Ext. B2. The date of execution of Ext. B1 is 15.5.1991. It cannot be believed that Mathu had suffered loss of vision after 30.4.1991 and prior to 15.5.1991. Even according to PW 2, the complaint was that of "dimness of vision". Therefore, it cannot be blindness. Even according to PW 2, the patient was able to see with the left eye within four metres of distance. It cannot be said that a person having vision for a distance of 4 metres could not have affixed signatures or made entry of name in a document.

13. The doctrine of dependent relative revocation is explained by Jarman on Wills, as follows:

Where the act of destruction is connected with the making of another will, so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, such will be the legal effect of the transaction and therefore, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation fails also, and the original will remains in force. The doctrine, which has been described as somewhat overloaded with unnecessary polysyllables,

applies whenever the intention to revoke a will is conditional only and the condition is not fulfilled, and the doctrine may apply although the later will is partially effective.

14. In the decision in *Thressia v. Lonappan Mathew* (1956 KLT 469 (F.B.) = 1956 KHC 103) it was held:

Revocation may be relative to another disposition which has already been made or is intended to be made and so dependent thereon that revocation is not intended unless the other disposition takes effect. The question in these cases is not determined by the presence or absence of express words of revocation. The court must be satisfied that the testator did not intend to revoke the original will except conditionally in so far as the other disposition could be set up.

15. Applying these principles, it cannot be said that even if Ext. B1 is not relied on, the terms of Ext. A1 will come to play. Execution of Ext. B1 cannot be said to be a conditional revocation of Ext. A1. The testatrices of Ext. B1 had never intended to revoke Ext. A1 conditionally.

16. Even in cases wherein the doctrine of dependent relative revocation can be applied, it does not mean that the genuineness of the contents of the earlier Will have to be swallowed and taken as granted without proof of the contents of the Will as contemplated under S. 63 of the Indian Succession Act read with S. 68 of the Indian Evidence Act. In *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , P.B. Gajendragadkar, J. speaking for the three Judges Bench held:

The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under S. 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. S. 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law.

17. Sections 59 and 63 of the Indian Succession Act are also to be considered. S. 59 of the Indian Succession Act echoes the soundness of the mind of a person to enable him to bequeath his property through a Will. The three illustrations to the section indicate what is meant by "a person of sound mind".

18. Section 63 of the Indian Succession Act requires that the testator shall sign or affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made

that it shall appear that it was intended thereby to give effect to the writing as a Will. The Section requires that the Will would be attested by two or more witnesses as prescribed. In the decision noted supra it was further held 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 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 the departed testator.

19. It was further held that in case of the existence of any suspicious circumstances surrounding the execution of the Will, the court naturally expects that all legitimate suspicion should be completely removed before that document is accepted as the last Will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus on the propounder very heavy; and, unless it is specifically discharged, the courts would be reluctant to treat the document as the last Will of the testator. It was also held that in case of a caveat alleging undue influence, fraud or coercion in respect of the execution of the Will propounded, is raised, it is for the caveator to prove such pleas; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting on his own free will in executing the Will and in such circumstances, it would be the initial onus on the part of the propounder to remove any such legitimate doubts in the matter.

20. In the decision noted supra it was further held in paragraph 22 as follows:

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 cogent and satisfactory evidence.

21. Relying on the decision in H. Venkatachala Iyengar's case (supra), another three Judges Bench of the Apex Court in Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, summarized the propositions laid down in H. Venkatachala Iyengar's case (supra) as follows:

1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since S. 63 of the Succession Act required a will to be attested, it cannot be used as evidence until, as required by S. 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity, in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

22. It has come out from H. Venkatachala Iyengar's case (supra) that the result of the application of aforesaid two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. Even though the first defendant is the propounder of Ext. B1, who could be treated as the main beneficiary in respect of the bequest by the co-testatrix deceased Mathu, it has to be noted that it was not only a joint Will, but also a mutual Will. Over and above the same, it has to be noted that a strict interpretation of the terms of Ext. B1 would

lead to the conclusion that the bequest through the mutual Will was limited in interest as there was a further bequest through Ext. B1 in favour of the additional respondents herein who are the other legatees noted therein. At the most, the interest of the first defendant over the bequest through Ext. B1 could only be the creation of a trust as far as the interest of Mathu over the scheduled properties was concerned. Matters being so, any ulterior motive cannot be attributed on the part of the first defendant in supporting Ext. B1 Will. Therefore, the main circumstance that may be styled as a suspicious one that the bequest through Ext. B1 was in favour of the propounder herself, has been easily explained away by the first defendant

23. Another three Judges Bench of the Apex Court in Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, had also relied on the aforesaid principles enunciated in H. Venkatachala Iyengar's case (supra).

24. The learned counsel for the appellant has pointed out that it was held in Balathandayutham and Another Vs. Ezhilarasan, that "when the execution of the will is not denied then no burden is cast on the party who relies on a will to prove its execution." It is true that such a sentence has been incorporated in paragraph 8 of the said decision. At the same time, it can be seen that paragraphs 16, 17 and 18 of the said decision clearly show as to how a Will has to be proved. In paragraph 18, the decision in H. Venkatachala Iyengar's case (supra) has been followed with approval and held,

these provisions prescribe the requirements and nature of proof which must be satisfied by the party who relies on a document in a court of law and that such a document shall not be used as an evidence until one attesting witness at least has been called upon for the purpose of proving its execution.

25. In Madhukar D. Shende Vs. Tarabai Aba Shedage, , it was held that the requirement of proof of a Will is the same as any other document excepting that the evidence tendered in proof of a Will should additionally satisfy the requirements of S. 63 of the Indian Succession Act, 1925 and S. 68 of the Indian Evidence Act, 1872. In Niranjana Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others, , it was held that S. 63 of the Indian Succession Act lays down the mode and manner of execution of an unprivileged Will. S. 68 of the Indian Evidence Act postulates the mode and manner of proof of execution of a document which is required by law to be attested. It, in unequivocal terms states that execution of a Will must be proved at least by one attesting witness, if an attesting witness is alive and capable of giving evidence. It was also held that while making attestation, there must be animus attestandi, on the part of the attesting witness, meaning thereby; he must intend to attest, and extrinsic evidence on this point is receivable.

26. The learned counsel for the appellant has relied on the decision of another Division Bench of this Court in Thayyullathil Kunhikannan and Others Vs. Thayyullathil Kalliani and Others, , to argue that in the absence of any specific

denial of execution and attestation of Ext. A1 in the written statement of first defendant, any further proof of Ext. A1 is not expected. In the said decision it was held that the fact that the proviso to S. 68 of the Indian Evidence Act is not applicable to Wills, and that it does not make any exception in the case of registered Wills, does not lead to an inference that a Will cannot be acted upon or used as evidence, unless it has been proved by examining an attesting witness. It was further held that the proviso does not speak of a case where the Will is not in dispute and that if by any rule of law or of pleadings, such proof is not required, S. 68 cannot operate to insist on formal proof by calling an attesting witness. With respect, we find that the said propositions enunciated in the said decision are not good law in view of H. Venkatachala Iyengar's case (supra), which was subsequently followed by the Apex Court consistently in many of the subsequent decisions. In a case wherein the High Court has held that proof of the Will was not necessary as the execution of the Will has been admitted in the pleadings, the Apex Court has held in S.R. Srinivasa and Others Vs. S. Padmavathamma, that it becomes evident that the execution of a Will can be held to have been proved when the statutory requirements for proving the Will are satisfied. It was further held therein that such admission in the pleadings can only be about "the making of the Will and not the genuineness of the Will".

27. The learned senior counsel appearing for the respondents has relied on Rosammal Issetheenammal Fernandez (Dead) By Lrs. and Others Vs. Joosa Mariyan Fernandez and Others, wherein it was held in paragraph 10 that,

Under the proviso to S. 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered is not specifically denied.

28. In Gopal Swaroop Vs. Krishna Murari Mangal and Others, it was held in paragraph 15 that, "Section 68 of the Evidence Act is against the use of a will in evidence unless one attesting witness has been examined to prove the execution". In view of the decisions in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, , Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, , S.R. Srinivasa and Others Vs. S. Padmavathamma, , Rosammal Issetheenammal Fernandez (Dead) By Lrs. and Others Vs. Joosa Mariyan Fernandez and Others, and Gopal Swaroop Vs. Krishna Murari Mangal and Others, , the decision of mis Court in Thayyullathil Kunhikannan and Others Vs. Thayyullathil Kalliani and Others, regarding the proof of Will in the absence of specific denial in the written statement, does not lay down good law. Even the absence of any specific denial of execution of a Will or even an admission of its existence will not absolve the duty of the propounder of a Will to prove its genuineness and the further duty to dispel all the suspicious circumstances, if any, surrounding its execution. The doctrine of dependent relative revocation also does not absolve the burden of the propounder of the earlier Will from proving its genuineness or its due execution, and the further burden to dispel all the suspicious circumstances, surrounding its execution.

29. As per S. 70 of the Indian Succession Act, an unprivileged Will like Ext. A1 can be revoked through the execution of another Will like Ext. B1. It is true that in the written statement of the first defendant there is a slight admission regarding the execution of Ext. A1. At the same time, when the first defendant was examined as DW 1, her case was that she came to know about Ext. A1 Will for the first time through this suit. According to her, she along with Mathu had sold 12 cents of property to one Balan and Shantha through a sale deed. During that period, she and deceased Mathu were residing along with the plaintiff. The plaintiff had assisted them in selling the property through the said sale deed. According to her, the plaintiff might have obtained the Will without their knowledge at the time of execution of the said sale deed. Ext. B4 is a copy of the said sale deed dated 23.1.1989; whereas Ext. A1 Will is dated 24.1.1989. Even though Ext. B4 is dated 23.1.1989, it was presented for registration and registered at 11.30 a.m. on 25.1.1989. It has to be noted that Ext. A1 Will dated 24.1.1989 was also presented and got registered at 11.40 a.m. on 25.1.1989. Apart from all these, attestors to both the documents, i.e., Ext. B4 as well as Ext. A1 were the same. Both the said documents were prepared by the same document writer.

30. It can be seen that Ext. B1 does not show the execution of Ext. A1 Will. What has been shown in Ext. B1 was the execution of Will No. 40 dated 7.5.1987 executed by both the testatrices, and not Ext. A1. On a perusal of Ext. B4 as well as Ext. A1, and by considering other circumstances, it is evident that the said contention forwarded by DW 1, is highly probable.

31. The learned counsel for the appellant has pointed out that DW 1 in cross-examination has deposed that herself and deceased Mathu wanted to revoke the bequest in favour of the appellant and that was why they had executed Ext. B1 Will. It is the clear case of DW 1 in cross-examination that she along with her deceased elder sister Mathu had executed four Wills in total. Ext. A1 shows that both the testatrices along with their deceased brother Kannan, had executed Will No. 20 of 1967. Both the testatrices together, subsequently revoked their said Will and executed Will No. 26 of 1987. Again, after revoking the said Will also they executed Will No. 40 of 1987. Evidently, DW 1 was referring the said three Wills and Ext. B1 Will as the said four Wills executed by them. Had they been aware of the execution of Ext. A1 Will, definitely they would have shown the execution of Ext. A1 Will also in Ext. B1 Will. Presently, in this case there is absolutely nothing to show as to the person or persons in favour of whom the bequests were made by both the testatrices through Will No. 40 of 1987, Will No. 26 of 1987 or Will No. 20 of 1967. There is no evidence to show the identity of the legatees in whose favour those bequests were made. That might have been made either in favour of the plaintiff or some other persons along with the plaintiff. That may be the reason why DW 1 has deposed that they wanted to revoke the bequest in favour of the plaintiff. Matters being so, the said assertion made by DW 1 need not be understood to mean that she was aware of the execution of Ext. A1.

32. The first defendant as DW 1 has proved the execution of Ext. B1. Her evidence clearly reveal the tenacity of both the testatrices to execute Ext. B1 as a joint and mutual Will. DW 2 is one of the attesters of Ext. B1 who clearly proved Ext. B1. According to him, he saw both the testatrices as well as the other witnesses affixing their signatures and that all of them saw him affixing his signature as attester in Ext. B1. He has proved his animus attestandi in affixing the signature in Ext. B1. DW 3 is the Sub Registrar, who registered Ext. B1. He proved the valid registration of Ext. B1. In fact, any suspicious circumstance does not exist surrounding execution of Ext. B1 Will, Both the testatrices were sisters who were chronic spinsters. They wanted some sort of safety and security to their life and that may be the reason why they had finally decided to execute a joint and mutual Will thereby revoking all the earlier bequests in respect of the said property. Ext. B1 is not the first Will that was executed by the testatrices, whereas, even according to DW 1 they had executed four Wills altogether. They were aware of the consequences of the execution of the Wills. The consistent versions of PW 1, DW 2 and DW 3 have proved that deceased Mathu had a sound state of mind that enabled her to exercise her free Will, in order to execute Ext. B1 at the time of its execution and registration. Through their evidence, the genuineness of Ext. B1 clearly stands proved. Matters being so, the concurrent findings on facts entered by the Subordinate Judge's court and also the learned single Judge in appeal, do not call for any interference at all. Due to the execution of Ext. B1, the plaintiff is liable to be non-suited. The impugned judgment and decree do not call for any interference at all. This appeal is devoid of merits, and is liable to be dismissed with costs.

In the result, this appeal is dismissed with costs.