

(2013) 02 KL CK 0120

In the High Court Of Kerala

Case No : Regular Second Appeal No. 223 of 2008

Kallangadi Edathil Chathan Veettil Kumaran Kidavu and
Another

APPELLANT

Vs

Niduvanchalil Keloth Damodaran Nair and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 2 KHC 191 : (2013) 2 KLJ 443

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : K.V. Sohan, Sreeja Sohan K. and Vineeth Kuriakose, for the Appellant; B. Krishnan and R. Parthasarathy, for the Respondent

Final Decision : Allowed

Judgement

S.S. Satheesachandran, J.—Additional defendants 11 and 12 in a Suit for Partition are the appellants. Respondents are plaintiff and defendants 2 to 10 in the suit. First respondent/plaintiff is the brother of late Krishnan Nair, who predeceased his mother, namely, Mathu Amma. Nine items of properties are included in the suit for partition. Over item No. 1 Krishnan Nair, his mother, plaintiff and another brother (Raman Nair), all of them together, obtained rights by assignment, and, later one of the brothers, Raman Nair, released his right in favour of Krishnan Nair. Krishnan Nair married Lakshmi Amma, and on his death issueless his rights in item No. 1 devolved equally on his mother and Lakshmi Amma. Over the rest, item Nos. 2 to 9, all of which belonged to Krishnan Nair, his widow and his mother got equal rights by inheritance. On the death of Mathu Amma, mother, her 1/2 right inherited over the properties of Krishnan Nair devolved upon her legal heirs, her children, plaintiffs and defendants 2 to 4, and also the children of another son Raman Nair, who predeceased his mother, defendants 5 to 7 in the suit. Pending the suit first defendant passed away, and her legal heirs were impleaded as defendants 8 to 10; Plaintiff claimed shares over item No. 1 inclusive of the 1/4th right he had on acquisition of that property

and over other items as per the shares specified and quantified in the plaint, for partition and separate possession. Second defendant remained ex parte. Defendants 1 and 3 to 7 filed a joint written statement supporting the plaint claim seeking partition of their shares, but, contending they are entitled to mesne profits from plaintiff and second defendant who are stated of appropriating the income. They also paid court-fee for separate allotment in terms of their share on division of the property. Defendants 8 to 10 who were substituted as the legal heirs of the first defendant filed a joint written statement supporting the contentions of the other defendants (D1, D3 to D7).

2. Appellants, third parties, applied for their impleadment as additional defendants in the suit contending that late Lakshmi Amma had executed a will bequeathing all her properties in their favour and two others. They were impleaded as additional defendants 11 and 12 in the suit. They resisted the suit contending that Krishnan Nair and Lakshmi Amma together had executed a joint and mutual will Ext. B1, over the properties belonging to them except a building referred to in that testament. In terms of such will on the death of Krishnan Nair, survivor Lakshmi Amma became the exclusive owner of all properties belonging to Krishnan Nair. On the death of Krishnan Nair and Ext. B1 will coming into effect, all his rights over suit properties devolved upon Lakshmi Amma, was their case. Later, Lakshmi Amma executed Ext. X1 will bequeathing her properties in favour of these defendants and also two others, and that will was deposited by her in a sealed cover following the procedure thereof before the District Registrar. On her death the sealed cover was opened and her testament Ext. X1 will, was registered. All her properties have been bequeathed under Ext. X1 will in favour of the legatees, these defendants and two others. Only with respect to 1/4th share which Mathu Amma had in item No. 1 property plaintiff and other defendants, her successors, can seek for partition, and, over the division of that item of property, that alone, in accordance with the shares of the parties, including these defendants, they have no objection. With respect to other items, all of them, plaintiff and other defendants have no right as they belonged absolutely to Lakshmi Amma, and she had made disposition of such properties under Ext. X1 will was the case of these defendants. Since the other two legatees in Ext. X1 will have not been made parties to the suit these defendants contended that the suit was bad for non-joinder of necessary parties.

3. Suit being resisted by the additional defendants raising contentions as above plaint was amended incorporating allegations impeaching the execution, genuineness and validity of Ext. B1 and X1 wills by the executors thereof, on various grounds. Plaintiff alleged that both wills were forged and fabricated, and not executed by the testators named. Additional written statement was filed by defendants to the amended plaint in which they disputed the genuineness of the wills impeaching the claim/right set up by D11 and D12 over the suit properties.

4. Though several issues were cast on the pleadings of parties the controversy which arose for adjudication was mainly focussed upon the genuineness of Ext.

B1 and XI wills, which were banked upon by appellants (D11 and D12) to resist the suit. Issue Nos. 3 and 4 framed for trial in the suit are thus:

3) Whether the will dated 10/01/1988 is genuine?

4) Whether Lakshmi Amma had executed a will on 22/01/1995?

On the side of plaintiff he was examined as PW 1, and Exts. A1 to A17 were marked, and for the appellants DW 1 to DW 5 were examined and Exts. B1 to B7 were exhibited. Documents summoned and produced were exhibited Exts. X1 to X6. Learned Sub Judge appreciating the materials tendered held that there are several suspicious circumstances surrounding the two wills, with respect to its execution and genuineness, and such circumstances have not been satisfactorily removed or explained by the propounders, appellants, and in that view of the matter the above issues were found against the appellants holding that Ext. B1 and X1 wills are not genuine. Both wills having been found not genuine, repelling the contentions of additional defendants 11 and 12, preliminary decree was passed in favour of the plaintiff and other defendants in accordance with the shares specified by them, over which they had no dispute or controversy at all, directing them to move application for passing a final decree.

5. Appeal preferred by the appellants challenging the preliminary decree granted by Trial Court, after re-appreciating the pleadings and evidence, was turned down by learned District Judge, who concurred with the finding made that Ext. B1 and X1 wills are not genuine reiterating the suspicious circumstances surrounding the wills pointed out by the learned Sub Judge. Preliminary decree passed in favour of plaintiff and other defendants, was affirmed without modification by the lower Appellate Court dismissing the appeal of additional defendants 11 and 12. Against the concurrent decision passed by the two Courts granting a preliminary decree in favour of the plaintiff and other defendants, directing partition of the suit properties in accordance with the shares specified under such decree, holding that Ext. B1 and X1 wills are not genuine and such wills are vitiated by suspicious circumstances, the Second Appeal has been filed.

6. Substantial question of law on which notice was issued to the respondents for hearing in the appeal is thus:

Whether the finding of the Courts below that there are suspicious circumstances surrounding execution of Ext. X1 will and propounders did not explain the suspicious circumstances is sustainable, in the light of the evidence and when Ext. X1 will was deposited before the Sub Registrar (sic. District Registrar) and was produced in Court by summoning the Sub Registrar.

7. Correctness of the finding rendered by the two Courts over the validity of Ext. X1 will, that alone, arise for consideration in examining the merit of the preliminary decree passed in favour of the plaintiff and other defendants in the suit. Whatever be the contention advanced by appellants to resist the suit and also over the impartibility of the suit properties on the basis of Ext. B1 will, which

has been concurrently held by both Courts as not proved, or not genuine and valid, has become final and unimpeachable. Where Ext B1 will relied by appellants was found to be unacceptable, indisputably, on the death of Krishnan Nair, estate left behind him would devolve equally upon his widow Lakshmi Amma and his mother, fourth defendant. Fourth defendant predeceased Lakshmi Amma. Lakshmi Amma died intestate, and, scheduled properties obtained by her as estate of late Krishnan Nair belong absolutely to plaintiff and defendants 1 to 10 who are the heirs of late Krishnan Nair, is their case for partition. Whatever right Lakshmi Amma over the estate of her husband, since she had no issues, by virtue of sub-section (2)(b) of Section 15 of the Hindu Succession Act, would devolve upon the heirs of her husband on her death is the basis of their claim for partition. Lakshmi Amma had executed Ext. X1 will bequeathing all her properties in favour of four persons, including appellants, and on her death by testamentary succession her properties devolved upon the legatees, is the case of appellants to resist the suit for partition. Both the Courts below have accepted the challenge raised over the genuineness of Ext. X1 will relying on some suspicious circumstances surrounding that will. Ext. X1 will is not genuine and valid is the finding of the two Courts below concurrently. Whether it is acceptable has to be examined with reference to the suspicious circumstances surrounding that will which had been canvassed of, and found appealing to both Courts to hold that Ext. X1 will is not valid.

8. Learned counsel Sri. K.V. Sohan appearing for appellants argued that suspicious circumstances relied by both Courts to conclude that Ext. X1 will are not sufficient even to infer or cast aspersion over the genuineness and validity of that will. Testator Lakshmi Amma had excluded her natural heirs in making bequests in favour of the appellants and two others, which was viewed as a suspicious circumstance to doubt the genuineness of Ext. X1 will has no basis or merit is the submission of the counsel relying on Savithri and Others Vs. Karthyayani Amma and Others, Reliance is also placed by the counsel on H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, to point out what could be viewed as suspicious circumstances surrounding a will and the burden cast upon the propounder to remove suspicion if any by clear and satisfactory evidence. Both the Courts below erroneously considered the suspicious circumstances alleged over the validity and genuineness of both wills, Ext. B1 and Ext. X1, together, and not separately to find out what suspicious circumstances, if any, surrounded the two wills, according to the counsel. Ext. B1 will was a joint and mutual will executed by Krishnan Nair and Lakshmi Amma and Ext. X1 will by Lakshmi Amma, after the death of Krishnan Nair, and so much so, suspicious circumstances, if any, surrounding such wills required consideration separately to consider the validity and genuineness of those wills, but that was not followed by both Courts, submits the counsel. No suspicious circumstance surrounded Ext. X1 will and both Courts have wrongly relied upon certain circumstances, which cannot be considered as suspicious circumstance at all, to doubt the genuineness of the will to hold erroneously that the above will is

not genuine and valid, is the submission of the counsel. Execution of Ext. X1 will by Lakshmi Amma voluntarily on her own free will and volition has been proved by the evidence of DW 3 one of the attestors who alone survived and also by that of the scribe, DW 4 examined in the case. If challenge against Ext. X1 fail, then non-impleadment of other two legatees named under the will as parties to the suit render it bad for non-joinder of necessary parties, is the further submission of the counsel.

9. Learned counsel Sri. B. Krishnan who appeared for respondents 1 to 10 resisted the challenges to the decree concurrently passed by the two Courts below contending that the genuineness and validity of Ext. X1 will in the given facts of the case has to be tested not only with reference to the suspicious circumstances surrounding that will but with respect to Ext. B1 will also, which has already been found to be not valid and genuine, and vitiated with suspicious circumstances. Where Ext. B1 will is alleged to have been jointly executed by Krishnan Nair and Lakshmi Amma, and it was referred to and asserted in Ext. X1 will, the finding rendered by two Courts that Ext. B1 will is not genuine and valid cuts at the root of Ext. X1 will, according to the counsel. Over and above the suspicious circumstances surrounding Ext. X1 will noted by the Courts below, that will has also to be looked into and examined, according to the counsel, with reference to the statutory provision covered by Section 15(2)(b) of the Hindu Succession Act. The aforesaid provision mandates that the line of succession otherwise applicable to a female Hindu would not be available over a property inherited by her from the husband or father-in-law in the absence of son or daughter of the deceased including the children of predeceased son or daughter. Property obtained from husband or father-in-law by a female Hindu would devolve upon the heirs of the husband and not in the general line of succession under sub-section (1) of Section 15 of the Act, is canvassed by learned counsel to contend that Ext. X1 will making a disposition contra to Section 15(2)(b) of the Act itself is a suspicious circumstance vitiating that will. Learned counsel relied on S.R. Srinivasa and Others Vs. S. Padmavathamma, to contend that Section 15(2)(b) of the Act is an exception carved out to ensure that the inherited property of an issueless female Hindu dying intestate goes back to the source, and, to prevent such inherited property falling into the hands of strangers. Pointing out the suspicious circumstances which have been dealt with by the two Courts below in detail to conclude that Ext. X1 will is not genuine and valid, and relying on some reported decisions viz. Adivokka and Others Vs. Hanamavva Kom Venkatesh "D" by LRs. and Another, , Gurdial Kaur and others Vs. Kartar Kaur and Others, , K. Laxmanan Vs. Thekkayil Padmini and Others, , Ajay P. Asher Vs. Kirit P. Asher and Another, the learned counsel contended that the suspicious circumstances surrounding X1 will have not been dispelled by the propounder to act upon the testament accepting it as genuine and valid. Learned counsel for respondents contended that the finding entered concurrently by the two Courts over the suspicious circumstances surrounding Ext. X1 will to hold that it is not genuine and valid, is unassailable, and the appeal is only to be

dismissed.

10. Before considering the question whether the finding made by the two Courts below that certain suspicious circumstances surround Ext. X1 will and as such that will is not genuine and valid, it has to be taken note that there is no challenge that the testator Lakshmi Amma had sound disposing state of mind and was fully capable of making a testament for disposition of her properties. Though plaintiff had amended the suit after impleadment of appellants as additional defendants 11 and 12, two among the legatees named under Ext. X1 will, raising allegations that both the wills, Ext. B1 and X1, are fabricated, and Ext. X1 will was neither executed nor deposited by Lakshmi Amma and it came into existence as a result of the fraud played by the present appellants, such challenges were not pressed into service nor any material produced thereof to impeach the genuineness of Ext. X1 will, with which alone we are now concerned. Where a will is under challenge in a proceeding the first and foremost question to be gone into is whether it has been duly executed by the testator on his/her own free will and volition. No doubt burden of proof over such execution rests on the propounder of the will. He has to show that it was signed by the testator, that the testator at the relevant time was having sound disposing state of mind, that he/she understood the nature and effect of the disposition, and that the testator signed it in the presence of two witnesses who attested it in his/her presence and the presence of each other. Once the propounder proves the above ingredients necessary over the proof of execution of a will, normally, his onus of proof of the will stand discharged. However in a case where there are suspicious circumstances surrounding the will propounder is bound to satisfy the Court producing such materials as are necessary to remove the suspicion, if any, surrounding the execution of the will. So much so whether there was due execution of the will by testator has to be looked into with reference to the essential ingredients for the proof of will, which include removal of suspicious circumstances, if any, surrounding the will, by the propounder.

11. DW 3 was one among the attestors in Ext. X1 will, and the other attestor had passed away. His evidence shows that he is a retired Sub Registrar. His evidence that the testator signed in Ext. X1 in the presence of both attestors, and, also attested the document in her presence, remains unchallenged in his cross examination. During his cross examination he gave some answers that the will was written by one Balakrishnan Nair, which was not so, and he also expressed a view or opinion that the testator who maintained cordial relationship with the relatives of her deceased husband without making bequest in their favour would not have made bequest to strangers, it is seen, are taken as suspicious circumstances among others surrounding the execution of the will by both the Courts below. Where his evidence that the testament was signed by the testator whose testamentary capacity was never under challenge, in the presence of the two attestors and they also attested the will in her presence, proper attestation and execution of the will is brought home. No suspicious circumstance surrounding the execution of will by the testator was shown or brought out

through the witness. His evidence over the contents of the testament regarding the properties included and who wrote the testament, even if it is shown wrong, and also his opinion that the testator would not have disinherited her legal heirs in her will, can never constitute suspicious circumstance unless they have some nexus with any other vitiating factor to hold that the will is not genuine and valid. An attester need not know the contents of the will. He made a mistake as to who had written the will without anything more, is of no consequence. Balakrishnan Nair referred to by him as the scribe, who is the other attester in the will, was a document writer. DW 4, the scribe, has stated that the above document writer was his master. DW 4 has asserted that he worked as an Assistant under Balakrishnan Nair. Statement made by DW 4 as above remain unchallenged. DW 3 has wrongly stated the name of the scribe as Balakrishnan Nair where it was actually written in the handwriting of his Assistant, DW 4, cannot be viewed as a suspicious circumstance surrounding the execution of Ext. X1 will. Whatever be the opinion made by DW 3 that Lakshmi Amma would not have made a bequest to strangers disinheriting her legal heirs that also cannot be viewed as a suspicious circumstance to doubt the genuineness of Ext. X1 will. Other proved circumstances in the case corroborate the evidence of DW 3, the attester, that there was due execution of Ext. X1 will by Lakshmi Amma, the testator. Ext. X1 will was deposited in a sealed cover by the testator before the District Registrar and after her death it was opened and registered. So far as the deposit of the will in a sealed cover and also the procedure followed opening the cover and its registration no challenge has been made other than a contention over the absence of seal and initial of the Registrar on the outer side of the envelope, sealed cover in which the will was deposited as a suspicious circumstance over the deposit of such will. What are the procedures governing deposit of wills are covered by Sections 42 to 46 of the Registration Act. Section 43 of the Act deals with the procedure to be followed on deposit of wills. It reads thus:

43. Procedure on deposit of wills.-- (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-Book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

There is no prescription that the Registrar should initial on the outer side of the sealed cover in which will is enclosed for deposit nor of affixing the seal of the Registrar on such cover. Both the Courts below have wrongly taken the absence of initial and also seal of Registrar on the outer cover as one among the circumstances to doubt the genuineness of the will. Further more, the mandate u/s 43 of the Act noted above is that the Registrar should satisfy that the person presenting the same for deposit is the testator or his/her agent. In the present case the testator herself had deposited the will. DW 5 was examined by the appellants to show that he was also present with Lakshmi Amma when she made

the deposit before the District Registrar. Though his evidence was disputed, the signature and thumb impression on Ext. X2 and also appearing in the cover Ext P5, in which the will was enclosed and sealed for deposit as having been affixed by Lakshmi Amma were not impeached, and shown as not subscribed by her. So the evidence let in through DW 3, attester, DW 4, scribe, and DW 5, witness present when deposit was made by testator not only prove the due execution of the will by the testator Lakshmi Amma but also its deposit by her before the Registrar in a sealed cover. If at all the plaintiff or defendants 1 to 10 had any case that the thumb impression and also signature appearing in Ext. X2 were not that of Lakshmi Amma, the testator, they should have taken steps to substantiate such a challenge. No such step was taken. Nor even a serious challenge on that count was made. That also is a circumstance to be taken note that the challenge canvassed against Ext. X1 will as not genuine is not of any merit.

12. Both Courts below have considered the genuineness of Ext. B1 and X1 will together. Where Ext. B1 will was found to be not proved for various reasons, with which we are not concerned now, without touching much whether any suspicious circumstance surrounded over Ext. X1 will, the Trial Court has concluded that that will is also not genuine and valid. DW 11 and DW 12, none of them, mounted the box though they propounded the will to remove the suspicious circumstances to satisfy the conscience of the Court was taken exception by the Trial Court without looking into the question what are the suspicious circumstances to be removed other than advertng to some "innocuous circumstances" based upon the discrepancies or infirmities in the evidence of DW 3, DW 4 and DW 5, which already discussed, do not have any bearing over the execution of the will by the testator. Circumstances canvassed as suspicious circumstances surrounding B1 and X1 will were considered together by both the Courts, and, that, no doubt, has resulted in forming wrong conclusion over Ext. X1 will. Where specific finding over the genuineness of each will has to be entered, separately, both the Courts below taking some circumstances surrounding one will, and holding them to be suspicious circumstances, have entered finding that both wills are not genuine. Looking into the judgment rendered by the District Judge in the appeal, it is seen, after holding that Ext. B1 will is not genuine on account of various suspicious circumstances surrounding that will, without much discussion whether any suspicious circumstance surrounded Ext. X1 will he has formed a conclusion that by the evidence adduced by the appellants (D11 and D12), propounders of that will, they have not dispelled the suspicious circumstances over that will. None of the aspects surrounding the execution of Ext. X1 will with reference to its attestation was looked into by the District Judge to examine whether there was any suspicious circumstance other than quoting in extenso the arguments canvassed by the counsel for respondents in the appeal that execution of X1 will is also surrounded by suspicious circumstances. Appellants have not adduced any convincing evidence over the deposit of Ext. X1 will, which was not even seriously disputed

by the plaintiff and other defendants, Ext. X2 cover did not contain the seal or initial or office of the District Registrar, are the other suspicious circumstances which appealed to the learned District Judge to hold that Ext. X1 will is not genuine to hold that the propounders of the will who did not mount the box failed to remove such suspicious circumstances. I have pointed out that the above referred circumstances are devoid of any merit and they do not constitute suspicious circumstances to doubt the genuineness of Ext. X1 will.

13. There is no merit in the challenge raised against Ext. X1 will by the learned counsel banking upon sub-section (2)(b) of Section 15 of the Hindu Succession Act. That sub-section reads thus:

15. General rules of succession in the case of female Hindus.--

(1) xxxx xxxx xxxx

(2) Notwithstanding anything contained in sub-section (1),--

(a) xxxx xxxx xxxx

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

The sub-section will have application only when there is an intestate succession and not otherwise. A provision has been made u/s 15(2)(b) of the above Act to ensure that property left by a Hindu female obtained from her husband or father-in-law where she had no son, daughter or predeceased son or daughter should go to the source, the heir of her husband or father-in-law, as the case may be, does not incapacitate or interdict such female from having a testamentary disposition of her properties. Property received by her from the husband or father-in-law can also be disposed by testamentary succession under her will. Reliance placed by the counsel on S.R. Srinivasa and Others Vs. S. Padmavathamma, to contend that Section 15(2)(b) of the Act has a direct impact in examining the validity and genuineness of Ext. X2 will has no merit. In the above decision the object u/s 15(2) of the Act has been stated by the Apex Court thus:

The basic aim of Section 15(2), Hindu Succession Act, 1956 is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers.

That Section has applicability only when issueless Hindu female died intestate and not in a case where testamentary disposition had been made by her. There is also no merit in the challenge that in Ext. X1 will the testator made bequest to strangers and not to her natural legal heirs, the heirs of her husband, where the

properties bequeathed are inherited from her husband. Among the four legatees under Ext. X1 will one is testator's uncle's son, another, brother of her husband (second defendant), and the remaining two are her neighbours, one of them a maid who attended on her. She has chosen only one among the heirs of her husband with some others in making the disposition. That does not show that there was disinheritance of heirs of her husband. In the present case other than contending that Ext. X1 will is a fabricated document and it was brought into existence at the instance of D11 and another legatee named under that document and also that the signature appearing in that document is not that of the testator, no suspicious circumstance as such surrounding the execution of Ext. X1 will was canvassed, projected or even attempted to be established in the case by the plaintiff or defendants 2 to 10. Even the contentions referred to above remain as it is without any material in support thereof, nor any step taken to establish any of them. Finding entered by the two Courts below that Ext. X1 will is not genuine as if its execution is surrounded by suspicious circumstance is patently erroneous and unsustainable, and the execution of that testament by Lakshmi Amma as made by her voluntarily with free will and having sound disposing mind, with no suspicious circumstance presented, has been amply proved by the evidence let in the case. Substantial question raised in the appeal is answered in favour of the appellants holding that the finding entered over Ext. X1 will by the two Courts below is wrong, and that will is genuine and valid.

14. Learned counsel for respondents has urged that in the event of upsetting of the finding made over Ext. X1 will the plaintiff has to be extended an opportunity to implead the other legatees under Ext. X1 will, who have not been made parties to the suit to have a division of the properties over which the plaintiff and defendants 2 to 10 have partible rights as legal heirs of Mathu Amma, the mother of Krishnan Nair. On the death of Krishnan Nair one half rights over his properties devolved upon his mother and the other half on Lakshmi Amma. Ext. B1 will jointly executed by Krishnan Nair and Lakshmi Amma has been found to be not genuine. Ext. X1 will of Lakshmi Amma and the bequest made by her under that will have application only over half of the properties inherited by her from her husband. Trial Court has answered the issue over non-joinder of necessary parties, in favour of the plaintiff. That also has to be taken note in the back drop that plaintiff and defendants 2 to 10, as legal heirs of Mathu Amma, mother of late Krishnan Nair, inherited her rights over the properties, which she had acquired along with Lakshmi Amma on the death of Krishnan Nair. Now, under Ext X1 will, apart from D11 and D12, two others have also obtained bequests over properties of Lakshmi Amma. Their impleadment as parties to the suit is essential for partition of the properties in the suit. I find that an opportunity has to be provided to the plaintiff to make them as additional defendants in the suit moving a proper application before the Court for such impleadment. Reported decisions relied by the counsel for the respondents referred to above, need not require to be dealt with in the given facts of the case where no suspicious circumstance as such has been made out or established by

plaintiff and Defendants 2 to 10, to impeach the execution of Ext. X1 will by its testator and also its genuineness.

In the result, preliminary decree passed in the suit is set aside and the case is remitted for fresh consideration, subject to the finding entered that Ext. X1 will is genuine and to the extent the testator Lakshmi Amma had ownership over the properties the bequests made under her will have to be given effect to in the division and allotment of shares to the parties to the suit. Parties are directed to appear before the Court below on 25/03/2013.

Appeal is allowed as indicated, directing both sides to suffer their costs.