

(2002) 07 MAD CK 0096
In the Madras High Court
Case No : T.O.S. No. 51 of 1987

Kalyanasundaram and Malarvizhi

APPELLANT

Vs

Damayanthi, S. Ganesan, S. Subramani, S. Sambandam and
S. Chandrasekaran

RESPONDENT

Date of Decision : 22-07-2002

Acts Referred:

Evidence Act, 1872 — Section 69
Succession Act, 1925 — Section 63

Citation : (2002) 07 MAD CK 0096

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : T.P. Kathiravan, for the Appellant; P. Veeraraghavan, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This suit has been filed by the plaintiffs for granting Letter of Administration with the Will annexed to them as the

beneficiaries of the deceased Annammal.

2. The averments in the plaint are as follows:

The plaintiffs are the son and daughter-in-law of late Sundaramoorthy and Annammal. The said Sundaramoorthy died on 17.11.1981 and the

Annammal died on 12.4.1982 and they were residing at No.29, Kavarai Street, Vadapalani, Madras-26 and the said Annammal was the absolute

owner of the said property. Annammal had left her last Will, dated 1.11.1980 in favour of the plaintiffs and the original Will is with the defendants.

The said Will was duly executed at Madras on 1.11.1980 and was registered. The said Annammal died only at Madras. No executor was

appointed for executing the Will by the Annammal. The amount of assets which is likely to come to the plaintiffs hands does not exceed in the aggregate sum of Rs.25000/- and the net amount of the said assets after deducting all items which the plaintiffs are by law allowed to deduct to only value of Rs.25,000/-. The plaintiffs are hereby undertake to duly administer the property and credits of the said Annammal deceased in any way concerning her Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof. Mr.Namachivayam, Radhabai and Amsavalli have filed their affidavit stating that they have got no interest over the Will property and they have got no objection to grant letter of Administration. The first defendant Damayanthi has filed O.S.No.8083 of 1986 before City Civil Court, Madras claiming her rights with an alleged settlement deed executed by deceased Sundaramoorthy on 18.9.81. The plaintiffs, therefore, pray for the grant of letter of administration with the Will annexed to them as the beneficiaries of the said deceased Annammal.

3. The averments in the written statement filed by the defendant are as follows:

As per the affidavit filed in A.No.5462 of 1990 only this defendant alone was shown as a party, but now in the plaint served on my counsel in the cause title other names have been shown as parties without being impleaded properly as party defendants. The defendant denied that Annammal was the absolute owner of the property mentioned in the plaint and had executed a Will dated 1.11.1980 in favour of the plaintiffs, registration of the same and that the original of the said Will is with this defendant. The suit filed without the production of the alleged original Will is not maintainable in law. The Will was got up fraudulently by the plaintiffs. Hence the alleged Will dated 1.11.1980 is not true, genuine and valid. This defendant is a daughter of Sundaramurthy and Annammal. There are two other daughters and 5 other sons. M. Sundaramurthy out of the income derived from his properties and business income purchased the land of the extent of 22 cents bearing S.No.178/19 at Kavarai Street, Kodambakkam, Vadapalani, Madras-26 under the sale deed dated 17.10.56. Though the sale deed was taken in the joint names of the father and mother, the father was enjoying the said property exercising absolute right over the same. The defendant's father by a registered settlement deed

dt.18.9.1981 settled a portion of the land and superstructure measuring 30" x 23-1/2" about 700 sq.feet in R.S.No.178/19 forming part of the

plaint schedule property in her favour which she has accepted and the father has delivered possession of the property to this defendant pursuant to

the settlement deed dated 18.9.1981. After the death of her parents, the plaintiffs objected to this defendant's entry into the said portion of the

property and interfered with her right to the same. Hence, the defendant filed a suit in O.S.No.8083 of 1986 in the City Civil Court, Madras

against the plaintiffs and Namachivayam seeking relief in respect of the property settled on her and the same was decreed on 14.3.90 in her favour.

The alleged settlement deed dated 27.11.1958 relied on by the plaintiffs was not true, acted upon and given effect to and her father did not deliver

possession of the property to his wife Annammal. The alleged Will executed by Annammal is not binding on this defendant and this defendant alone

is entitled to the portion of the suit schedule property settled on her under the irrevocable registered settlement deed dated 18.9.81. The plaintiffs

have failed to seek the relief of the grant of letter of administration within the period of limitation from the date of death of the father and the mother

and in the absence of any explanation for the delay in filing this suit, the relief claimed is barred by limitation. The plaintiffs taking advantage of the ill

health of Annammal and their exclusive protection and custody of Annamal having full domination and control of the deceased to the exclusion of

all others got the alleged Will prepared taking a prominent part and conferring on them the substantial benefits. The father and mother died intestate

in respect of the aforesaid property excluding the property covered by the settlement deed dated 18.9.1981 executed in favour of this defendant.

The suit is not at all bonafide. Hence, the suit has got to be dismissed with costs of this defendant.

4. The averments in the reply statement filed by the plaintiffs are as follows:

The last Will executed by Annammal was under the custody of the plaintiffs. The second plaintiff was given the original Will dated 1.11.1980 to

Sundaramurthy in the year 1981 as the same is required for him and she did not ask anything about the original Will required for him. When the

second plaintiff went for child birth to her mother's house, Damayanthi was looking after Sundaramurthy and she had pledged jewels belonging to

the second plaintiff in M.C.C. Bank on 17.7.81 and she made arrangement to execute the alleged deed of settlement dated 18.9.81 and she had

also taken away the original Will with bad motive to defeat the rights of the plaintiffs and the same was admitted by her at the time of last ceremony

of Sundaramurthy. The jewels were also not handed over to the second plaintiff. The plaintiffs taken out an application against the said defendant

to produce the original Will, but she had not produced the same. The defendant filed a civil suit in O.S.No.8083 of 1986 as OP as if she is pauper.

Sundaramurthy himself had admitted in the Will dated 1.11.1980 that the Will property was given to his wife Annammal under deed of settlement

dated 27.11.1958 and the same was exclusive enjoyment of Annammal. The alleged document of settlement dated 18.9.81 came to the

knowledge of plaintiffs only after the death of Sundaramurthy. The defendant's suit was decreed exparte. The plaintiffs filed an application to set

aside the decree and the same was dismissed by the trial court and the plaintiffs preferred CMA No.132/92 which was also dismissed. The alleged

deed of settlement dated 18.9.81 is a fraudulent document. It is not valid in law. The Sundaramurthy had no rights over the Will property. The suit

was filed in time by the plaintiffs. This defendant alone opposing the Will to be probated since she created a document in her favour on 18.9.81

which is not valid in law. Hence, the suit has got to be decreed as prayed for.

5. On the above pleadings by the respective sides, the following issue was framed:

Whether the Will executed by the testator is true and genuine?

6. The plaintiffs have come forward with the suit seeking grant of Letter of Administration alleging that the mother of the first plaintiff Annammal

executed her last Will and Testament on 1.11.1980 in favour of the plaintiffs in a sound and disposing state of mind. The contesting first defendant

has opposed the request inter-alia that the said Annammal was not the absolute owner of the Will property; that she did not execute any Will on

1.11.1980; that she was not in a sound and disposing state of mind; that Annammal was very old and that due to sickness, she was hospitalised

during the relevant period; that in respect of a part of the property, the husband of the Annammal, Sundaramurthy has executed a settlement deed

in favour of the first defendant; that the plaintiffs have not sought the relief

within the period of limitation; that there are so many suspicious circumstances attendant over the alleged Will, and hence, the suit has got to be dismissed.

7. On the side of the plaintiffs, P.Ws.1 to 4 were examined and Exs.P.1 to 18 were marked. On the side of the defendants, D.W.1 was examined and no documents were marked.

8. Arguing for the plaintiffs, the learned counsel would submit that the plaintiffs originally filed a petition, which was on objection converted into a

testamentary suit; that the first plaintiff is the son of Sundaramurthy and Annammal; that the second plaintiff is the wife of the first plaintiff; that the

said Sundaramurthy and Annammal had six sons and three daughters; that only the first defendant is contesting the suit; that Sundaramurthy died on

17.11.1981; that Annammal died on 12.4.1982; that the house property situated in Door No.29, Kavarai Street, Vadapalani, Madras was

purchased by Sundaramurthy under a sale deed dated 12.10.1957 as found under Ex.P.2; that in the year 1958, he settled the property on his

wife Annammal out of love and affection; that the said Annammal mortgaged the suit property in the year 1959 under Ex.P.8, mortgage deed; that

Sundaramurthy identified his wife's signature therein; that Annammal created another mortgage in favour of Murugammal under Ex.P.9, mortgage

deed, wherein also his signature was identified by Sundaramurthy, and thus, the property was enjoyed by Annammal as an exclusive owner; that

she executed a Will on 12.11.1980 bequeathing the above said immovable property in favour of the plaintiffs herein; that on the same day, namely

12.11.1980, Annammal had also executed a settlement deed in favour of her daughter-in-law, Kasthuri examined as P.W.4; that the original Will

was in the custody of Sundaramurthy, who handed over the same to the second plaintiff when he went to hospital for treatment; that after the

treatment for a period of eight months, he came home and got back the original Will from the second plaintiff; that the contesting defendant is in

custody of the original Will; that despite the demand made by the plaintiffs after the death of Sundaramurthy, she has not given the same. Under the

stated circumstances, the plaintiffs were compelled to apply for a registration copy of the same and file in court; that the contesting defendant had

pledged four sovereigns of gold jewels belonging to the second plaintiff with

Madras Central Co-operative Bank Ltd. On 17.7.1981; that the contesting defendant by exercising undue influence over her father Sundaramurthy, got the settlement deed executed in her favour, but she did not inform about the same to any one till the life time of Sundaramurthy; that in order to defeat the right of the plaintiffs and to grab the property, the contesting defendant has refused to hand over the original Will; that from the evidence available, it would be abundantly clear that P.Ws.1 and 2 have not taken part either in the preparation or in the execution of the document. In order to prove the same, the plaintiffs have summoned Ex.P.16 and Ex.P.17 documents from the Sub Registrar, Kodambakkam; that Ex.P.16 is the certified copy of the Will and Ex.P.17 is the xerox copy of the thumb impression register and the signatures of Sundaramurthy and Annammal; that the first defendant has admitted the signatures of Sundaramurthy and Annammal in Ex.P.17; that though it could be seen from Ex.P.1, registration copy of the Will and Ex.P.16, certified copy of the Will that the said Will was attested by two witnesses, both of the witnesses could not be examined, since one of the attesting witnesses Dakshinamoorthy is no more, and in so far as the other attesting witness is concerned, subpoena was taken, but it was returned with an endorsement stating that he was suffering from Coma, and hence, both the witnesses could not be examined; that from the evidence of P.W.3, the Sub Registrar, Kodambakkam, it would be clear that the Will executed by Annammal on 12.11.1980 was registered on 13.11.1980 and through his evidence the document has been proved as required by law; that from the evidence of P.W.4 it could be seen that Annammal had executed a settlement deed in her favour on the very day, namely, 12.11.1980 and the said document was also registered on 13.11.1980; that in the face of the evidence of P.W.4, it cannot be disputed that Annammal was in a good and sound disposing state of mind at the time of execution of the Will; that though the contesting defendant has come forward to attack the Will stating that there are so many suspicious circumstances attendant over the same, has not adduced any proof in that regard; that in the absence of sufficient proof, the contentions put forth by the defendants' side have got to be necessarily rejected; that at the time when the petition was filed originally, the date of the Will executed by Annammal is found correctly as

12.11.1980, but subsequently, when the same was converted into a suit, a typographical error has crept in and the date of the execution of the Will

was found as 1.11.1980, and hence, it cannot be stated that the plaintiffs have come forward for the relief in respect of the Will, dated 1.11.1980;

that it has been specifically averred in the plaint that the Will in question was executed by Annammal, though it is found under Ex.P.1 document that

the same was executed by Annammal and her husband Sundaramurthy; that it is pertinent to note that the property though originally belonged to

Sundaramurthy by a deed of Settlement, it was vested on Annammal and she was the absolute owner on the date of the execution of the Will, and

hence, much significance cannot be attached over the same, and thus, the plaintiffs have adduced necessary proof regarding the execution,

attestation and registration of the document, and hence, letters of administration, as asked for, has got to be granted.

9. Countering to the above contentions of the plaintiffs, the learned counsel for the defendants with vigour and vehemence would submit that

admittedly, Sundaramurthy and Annammal had 9 children and that there was no special circumstances or reasons to exclude all the eight children

and bequeathing the property in favour of the first plaintiff and his wife; that the specific case of the plaintiffs in the original petition and the plaint

after it was converted into a suit that Annammal executed a Will in respect of the plaint mentioned property, but a perusal of Ex.P.1, registration

copy would reveal that the Will was executed by both Annammal and Sundaramurthy; that on that score alone the plaint has got to be rejected in

limine; that the plaintiffs have not proved the testament as required by law; that they have not produced the original; that even in the affidavit, the

defendant has stated that she was not in possession of the original Will; that it is pertinent to note that Annammal had lived even after

Sundaramurthy; that even if the Will was in the custody of Sundaramurthy, the defendant had obtained the custody of the Will from

Sundaramurthy, Annammal should have asked about the same; that it is pertinent to note that P.W.1 has well admitted that he came to know about

the Will on the night of the date of registration, and hence, the plaintiffs have not given proper or convincing reason for the non production of the

original Will and on that ground alone, the suit has got to be dismissed; that even if both the witnesses are not available or death, the plaintiffs

should have followed the procedure contemplated u/s 69 of the Evidence Act, but they have not done so; that the production of the certified copy of the Will and the xerox copy of the register containing the thumb impression and the signatures of Sundaramurthy and Annammal cannot constitute sufficient proof as required by law; that in the absence of necessary proof in respect of the attestation as required by law, the Will cannot be taken to have been proved; that there are lot of discrepancies between the affidavit of the attesting witness, the averments made in the plaint and the oral evidence adduced by the plaintiffs' side regarding the date and place of execution, which would sufficient to disentitle the plaintiffs from getting the relief. There are so many suspicious circumstances, which throw a doubt on the very truth, genuineness and validity of the alleged testament; that during the relevant time, P.Ws.1 and 2 were living with Annammal and Sundaramurthy; that it is pertinent to note that P.W.2, who is the wife of the first plaintiff, is the grand daughter of Sundaramurthy and Annammal; that from the evidence of P.W.4, it would be clear that the first plaintiff was well available at the time of registration of the settlement deed under Ex.P.18; that without the knowledge and active participation of P.Ws.1 and 2, the alleged Will under Ex.P.1 or settlement deed under Ex.P.18 could not have come into existence; that it is pertinent to note that during the relevant period except the plaintiffs, no one of their relatives were living with Annammal and Sundaramurthy; that P.W.1 has well admitted that all the original documents pertaining to the Will property are in their custody and they have produced the same before this Court, and hence, it would be clear that even if Annammal had executed a Will, the same should have been in the custody of the plaintiffs for the reasons best known to them and they have not produced the same before the court; that the plaintiffs have not dispelled any one of the suspicious circumstances attendant over the alleged testament; that in the absence of the original Will and in the presence of lot of discrepancies and suspicious circumstances, the plaintiffs' request for grant of Letters of Administration has got to be refused.

10. The facts that are admitted by both the parties can shortly be stated as follows:

The second plaintiff is the wife of the first plaintiff. The first plaintiff's father Sundaramurthy and his wife Annammal had six sons, namely, Ganesan,

Subramaniam, Sambandam, Namachivayam, Chandrasekaran and Kalyanasundaram, the plaintiff herein and three daughters, namely, Radhabai, Amsavalli and Damayanthi, the first defendant herein. The Will property was purchased by Sundaramurthy under Ex.P.2, a certified copy of the sale deed, on 12.10.1957. He settled the property on his wife Annammal by executing a settlement deed as found under Ex.P.3. Both Sundaramurthy and Annammal continued to live and reside in the suit property till their life time. Sundaramurthy died on 17.11.1981 as evidenced by Ex.P.4 and Annammal died on 12.4.1982 as evidenced by Ex.P.5. The defendant had filed O.S.No.8083 of 1986 in the City Civil Court, Madras against the plaintiffs and Namachivayam alleging that Sundaramurthy executed a settlement deed in her favour on 18.9.1991 in respect of a portion of the land and superstructure in the immovable property situated at Door No.29, Kavarai Street in respect of the Will property. 11. The specific case of the plaintiffs seeking the grant of Letters of Administration is that the mother of the first plaintiff Annammal executed her last Will and Testament on 1.11.1980 in the presence of two attesting witnesses and the same was registered on the very day. In order to prove the testament, both the plaintiffs have examined themselves as P.W.1 and P.W.2, the Sub Registrar, Kodambakkam as P.W.3 and Mrs. Kasthuri, one of the daughter-in-laws of the testatrix as P.W.4. At the out set it has to be pointed out that the original Will alleged to have been executed by the testatrix has not been produced by the plaintiffs. What are all stated in the plaint is that the original Will is in the hands of the respondent. By an affidavit, at the earliest, the respondent has stated that the original Will is not in her possession. According to P.W.1 and P.W.2, the original Will was all along in the custody of Sundaramurthy till his life time and during the short interval, when the defendant was looking after him, she could have taken it away and thus, she has obtained the custody of the said original Will. Sundaramurthy died on 17.11.1981 and Annammal died after a period of six months, that was on 12.4.1982. According to the witnesses, immediately after the death of Sundaramurthy, they asked the defendant about the Will and she also denied the custody of the same. Nowhere, the plaintiffs have stated that any demand was made about the original Will by Annammal on the defendant during her life time or the plaintiffs issued any notice asking about the original Will. Had it been true the plaintiffs

could have examined atleast any one of the family members to prove the fact that the contesting defendant is in custody of the original Will, but they have not done so and thus, the court is of the view that the explanation tendered by the plaintiffs for the non production of the original Will is not satisfactory.

12.The plaintiffs, at the time of initiation of the proceedings, have filed a registration copy of the alleged Will, which is marked as Ex.P.1. They have

also produced Ex.P.16, a certified copy, which is marked through P.W.3, the Sub Registrar of Kodambakkam. A perusal of Ex.P.1 and Ex.P.16

relied on by the plaintiffs would go to show that on 12.11.1980 both Annammal and her husband Sundaramurthy had executed a Will and the

same was registered on 13.11.1980. The plaintiffs have asked for a grant of Letter of Administration in respect of the Will executed by Annammal

and not in respect of the Will executed by herself and her husband as found under Ex.P.1 and Ex.P.16. Neither in the pleadings nor in the

evidence, the plaintiffs have ever stated that the Will was executed by both Sundaramurthy and Annammal. The explanation tendered by the

learned counsel for the plaintiffs that since the Will property exclusively belonged to Annammal, a specific averments was made in the plaint stating

that the Will was executed by Annammal. It would be very hard to accept such an explanation to grant the relief of Letter of Administration, as

asked for by the plaintiffs in the plaint. In the original petition, the plaintiffs have specifically averred that Annammal executed the said Will on

1.11.1980. The learned counsel for the plaintiffs brought to the notice of the court that the Will was actually executed on 12.11.1980 and the same

has been specifically stated when the petition was originally filed, but subsequently typographical error has crept in and on that ground the relief

should not be refused. It is true that in the petition originally filed by the petitioners, they have stated that the Will was executed on 12.11.1980. But

P.W.1 has deposed that on 13.11.1980 the Will was executed at Sub Registrar's Office and the same was registered and that he was not aware

of the execution of Ex.P.1 on 12.11.1980. It is an admitted position that Sundaramurthy and Annammal were living in Door No.29, Kavarai

Street, Vadapalani till their life time. A perusal of the affidavit filed by one of the attesting witnesses N. Balakrishnan would show that on

12.11.1980 he was present with the deceased Annammal at her house at No.15, Pandaram Street, Saligramam, Madras. It is nobody's case that

Annammal executed a Will at Door No.15, Pandaram Street, Saligramam, Madras. It has to be pointed out that the Will referred to in the affidavit

of the said Balakrishnan was the one executed by Annammal and not both by herself and her husband. Hence, it cannot be stated that the affidavit

of the said attesting witness is in respect of the Will found under Ex.P.1 and Ex.P.16. Thus the discrepancies are noticed as to the date and place

of execution and apart from the fact that by whom the said testament was executed.

13. Insofar as the question as to the proof of execution and attestation of the testament, the court may hasten to say that the plaintiffs have not

proved the testament as required by law. In the instant case, the original Will is not placed before the court. What are all available is the registration

copy and certified copy of the alleged Will marked as Ex.P.1 and Ex.P.16 respectively. A perusal of Ex.P.1 and Ex.P.16 would go to show that

the said testament was attested by Balakrishnan and Dakshinamurthy; that one of the attesting witnesses Dakshinamurthy is dead. It is not disputed

that Balakrishnan, attesting witness is alive. According to P.W.1, the said Balakrishnan is now 70 years of age and he is not able to move about.

Under the stated circumstances, there was no impediment for the plaintiffs to take out a commission to examine the said attesting witness. The

learned counsel appearing for the plaintiffs would submit that Subpoeno was taken to the said witness and it has been reported that he is under

Coma, and hence, he could not be examined even on commission. Even in cases where both the attesting witnesses are dead, the testament could

be proved otherwise. Under such a situation, Section 69 of the Evidence Act envisages that what are all required in a case in which no attesting

witnesses can be found is to prove the attestation by bringing on record the evidence of a witness that the attestation was in the handwriting of that

person, who was described as the attesting witness and that he had put his signature. But, in the instant case, the plaintiffs have not taken any steps

to prove the testament as required by law. Much relying on Ex.P.17, a xerox copy of the thumb impression register containing two thumb

impressions of Annammal and Sundaramurthy, the learned counsel would submit that the thumb impression and the signature found under Ex.P.17

coupled with the certified copy of the Will under Ex.P.16 would clearly reveal that the said document was executed by the testatrix. At this

juncture, it becomes important to point out that execution and attestation are the two different and separate acts and the latter following the former.

Needless to say that the Will is one of the solemn document, which the law requires attestation necessarily. Even assuming that the valid execution

of the document is proved, it would not be sufficient if there is no proof as to the due attestation of the document. In a given case, if the attestation

is not proved as required by law, even the fact of execution if proved is of no avail. In the instant case, without any hesitation the court can find that

the plaintiffs have neither proved the execution nor the attestation as required by law.

14. It is further contended by the plaintiffs" side that on 12.11.1980 when the Will under challenge was executed by Annammal, she has also

executed a settlement deed in favour of his daughter-in-law Kasthuri, who examined as P.W.4; that the registration copy of the settlement deed is

marked as Ex.P.18; that the settlee,P.W.4 Kasthuri has deposed that Annammal was in a good and sound disposing state of mind; that the

settlement deed executed in favour of P.W.4, Kasthuri and the Will under Ex.P.1 were executed on 12.11.1980 and both were registered on the

same day, namely, 13.11.1980; that these facts would indicate the truth and genuineness of the Will in question. A careful scrutiny of the evidence

of P.W.4 would clearly reveal that she has not spoken even a single word about the alleged Will under Ex.P.1. On the contrary, she has deposed

that she accompanied her mother-in-law and father-in-law to the Sub Registrar's office and were present at the time of registration of the

settlement deed found under Ex.P.18. It remains to be stated at this juncture that what is required to be proved in the instant case is the Will found

under Ex.P.1 and not the settlement deed executed in favour of P.W.4, and hence, the above contention of the plaintiffs" side cannot be

countenanced.

15. Many are the suspicious circumstances attendant over the testament under challenge. Concededly, the property was originally purchased by

Sundaramurthy in the year 1956 and settled the same on his wife in the year 1958 and they were living in the said property till their life time. It is

not the case of the parties that they have any other immovable property except the one found under the Will. Sundaramurthy and Annammal had six sons and three daughters. It is not the case of the plaintiffs that there was any misunderstanding between the parents and any one of the children at any point of time. Under such circumstances, it is highly improbable, unbelievable and unnatural also that Sundaramurthy and Annammal executed the Will bequeathing the entire property to one of their sons, namely, the first plaintiff and his wife, the second plaintiff. The exclusion and dis-inheritance of all the other eight children would naturally throw a doubt over the testament. The plaintiffs are unable to put forth strong or acceptable reason or compelling circumstances which led Sundaramurthy and Annammal to execute such a testament. It is an admitted position that during the relevant period, the plaintiffs were living with Annammal and her husband. Taking into consideration the age of Sundaramurthy and Annammal, they could not have prepared any Will as found under Ex.P.1. It is the case of the plaintiffs that on 12.11.1980 Annammal executed both settlement deed in favour of P.W.4 and Will in favour of the plaintiffs, and hence, these documents could not have come into existence without the participation of the plaintiffs in the preparation of the said document. P.W.1 has admitted that on 13.11.1980, he took his mother and sister-in-law to the Sub Registrar's office; that his father came over there with an accountant; that the first plaintiff was waiting outside the office and in afternoon, the first plaintiff took his mother and sister-in-law back home and he came to know about the execution of the Will by his mother on the night on 13.11.1980 through his wife. Contrary to the above, P.W.4 has deposed that at the time of registration herself, her mother-in-law, father-in-law and the first plaintiff were present. Immediately after the registration of Ex.P.18, settlement deed all of them returned home. In the face of the evidence of P.W.4, as stated above, it cannot be stated by the first plaintiff that he had no knowledge of the alleged Will even at the time of registration. All the above would go to show that the plaintiffs, who had a role to play in the preparation of the alleged Will, have suppressed the same, but had pleaded no knowledge.

16. From the available evidence, it could be very well inferred that without the active participation of P.Ws.1 and 2 in the preparation, execution,

attestation and registration, the alleged document could not have come into existence. The true test to be applied by the testamentary court in a

case like this is whether the evidence adduced and relied on by the propounder of the Will is such as to satisfy the conscience of the court.

Needless to say that it is impossible to reach such satisfaction unless the propounder who sets up the testament places a cogent and convincing

explanation of the suspicious circumstances surrounding the making of the Will. The Apex Court has held in a decision reported in Kalyan Singh

Vs. Smt. Chhoti and Others, as follows:

A will is one of the most solemn documents known to law. The executant of the Will cannot be called to deny the execution or to explain the

circumstances in which it was executed. It is therefore, essential that trustworthy and unimpeachable evidence should be produced before the court

to establish genuineness and authenticity of the Will. It must be stated that the factum of execution and validity of the will cannot be determined

merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from

falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in

the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into the surrounding

circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party.

In a decision reported in Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, , the Apex Court has held thus;

The mode of proving a will does not ordinarily differ from that of proving any other document except to the special requirement of attestation

prescribed in a case of a will by S.63 of the Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious

circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient

to discharge the onus.

Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court

accepts the will as genuine. Even where circumstances give rise to doubts, it is

for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes a prominent part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence.

The test enunciated by the Supreme Court in the above rulings, if applied, the court has to necessarily say that in the instant case propounder has not discharged the burden satisfactorily. The court is of the considered view that all the above suspicious circumstances, which are not at all dispelled by the plaintiffs, would be sufficient to refuse the relief asked for. Hence for all the reasons stated above, it has to be necessarily held that the plaintiffs are not entitled to get the relief asked for. Therefore, the issue is answered accordingly.

17. In the result, the suit is dismissed. There shall be no order as to costs.