
(2008) 07 AP CK 0099

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 306 of 1990

Lellapalli Sakuntala (died) per Lrs

APPELLANT

Vs

Vedantam Seethamahalakshmi and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Evidence Act, 1872 — Section 114, 32(6), 45, 47, 68
Succession Act, 1925 — Section 63

Citation : (2008) 6 ALT 113 : (2008) 3 APLJ 122

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; P. Rajagopala Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This is plaintiff's appeal against the judgment and decree of lower Court dismissing the suit for partition based on unregistered Will.

2. Lellapalli Sriramulu was medium farmer of Chittavaram village, near Narsapur town in West Godavari District. Seetaramaswamy and Radhakrishna Murthy are sons and Seetamahalakshmi and Balatripura Sundari are daughters of Sriramulu. Long prior to 1976, there was a partition between father and his two sons, in which Sriramulu got agricultural lands and tiled house. On 12.01.1976, Sriramulu executed a registered Will. Under this Will, he gave some property to two daughters, the eldest son and the wife of second son. Some time thereafter, he suffered paralysis. He was treated at Dr. Keshava Rao Hospital at Narsapur, during which either his two daughters or second daughter-in-law looked after him. After discharge from hospital, he spent his convalescence period at the house of second son at Narsapur, who statedly sold his share of properties and took up a job with a Marvadi businessman in Narsapur. He was allegedly served by second son and daughter-in-law. On 05.08.1980, Sriramulu executed another Will, under which daughters were given five bags of paddy and second daughter-in-law was given substantial portion of property. The legatee made a demand on

others for partition of property bequeathed to her, in vain. Therefore, she filed suit being O.S. No. 109 of 1981 on the file of the Court of the Subordinate Judge, Narsapur for partition of plaint "A" (lands), "B" (tiled house) and "C (movables) schedule properties.

3. Seetaramaswamy, Seetamahalakshmi, Bala Tripura Sundari and Radhakrishnamurthy are defendants 1 to 4 respectively. Defendants 5 to 8 are alleged to be tenants of plaint "A" schedule properties. During pendency of the suit, defendant No. 4 (husband of plaintiff) died and his son was brought on record as defendant No. 9. After death of first defendant, his wife and children came on record as defendant Nos. 10 to 12. First defendant filed written statement, which was adopted by his sisters, defendant Nos.2 and 3. Defendant No. 4 filed a separate written statement supporting the case of wife (plaintiff). Defendants 5 to 8 remained ex parte and defendant No. 9 adopted written statement of defendant No. 4, whereas defendant Nos.10 to 12 adopted written statement of first defendant. The suit was opposed mainly on the ground that the Will, dated 05.08.1980 is forged and brought into existence, after death of Sriramulu on 16.10.1980. The second Will was also challenged on the ground that it is suspicious. It is further alleged that due to matrimonial disharmony with their husbands, defendants 2 and 3 left their husbands and were staying with Sriramulu at Chittavaram and therefore, Sriramulu had a special affinity for them and he would not have deprived them of property, which was given to them under the registered Will, dated 12.01.1976.

4. The trial Court framed seven issues. The crucial issue before the trial Court was whether the unregistered Will, dated 05.08.1980 is true, valid and binding. The plaintiff examined herself as P.W.1 to depose about the plaint case. The unregistered Will was marked as Ex.A.1. Polisetty Manikyam, one of the attestors, was examined as P.W.2. The scribe of the Will was examined as P.W.3. Defendant No. 11, who was impleaded as legal heir of deceased first defendant, was examined as D.W.1 and Bala Tripura Sundari, Sriramulu's second daughter, was examined as D.W.2. Besides, marking registered Will as Ex.B.1, defendants also marked five other documents and two exhibits are marked by the Court. On considering oral and documentary evidence, the Court below disbelieved Ex.A.1, Will, but decreed the suit for partition directing partition of item 1 of plaint "A" schedule property into four equal shares by metes and bounds and delivery of separate possession of one such share to the plaintiff. The other claim in respect of plaint "A", "B" and "C schedule properties was dismissed.

5. During pendency of this appeal, defendants 2 and 3 died. Even while they were alive, it appears they executed settlement deed conveying property, which fell to their share under Ex.B.1, Will, in favour of children of first defendant. They sold away the property. Plaintiff also died during pendency of the appeal, and her son who is already on record as defendant No. 9 representing the estate of fourth defendant, got transposed as sole appellant Order of this Court, dated 24.01.2006, in A.S. M.P. No. 2476 of 2005. Respondent No. 4 in the appeal, wife

of first defendant also died and memo is filed stating that respondents 5 and 6 represent her estate. In view of these events, the actual dispute is between the grandchildren of late Sriramwlu - one group commending acceptance of Ex.B.1, and the other group arguing for sustaining Ex.A.1.

6. The arguments of learned Counsel for appellants and learned Counsel for respondents 2,4,5 and 6 are heard at least on four days. The submissions, in the background of the case, lead to only question for consideration as to whether Ex.A.1 is true, valid and binding. Before considering this aspect, legal principles with regard to proof of Will and the effect of suspicious circumstances pointed out may be noticed.

Legal Principles

7. The propounder of a Will is required to prove Will by examining one or more attesting witnesses. When such proof of execution of Will is accepted, the last wish of testator has to be respected and disposition in the Will are to be given effect to. Nevertheless, when challenger of Will alleges fraud, coercion or undue influence in execution of Will, the Court subject to proof of such things by caveator, has to reject the Will. In addition to these yet another situation where the Will cannot be treated as last testamentary disposition is, when execution of the Will is surrounded by suspicious circumstances.

8. In *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, . it is laid down that the propounder of Will has to prove (i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and put his signature on the document of his own free will, and (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder. If a Will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion.

9. In *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, . a Constitution Bench of Supreme Court approved *H. Venkatachala Iyengar* and laid down as below:

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. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the 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 signature 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 suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes 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.

(emphasis supplied)

10. In *Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another*, . *Madhukar D. Shende Vs. Tarabai Aba Shedage*, . *Ramabai Padmakar Patil (D) through LRs. and Others Vs. Rukminibai Vishnu Vekhande and Others*, . Supreme Court reiterated law enunciated in *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, . An element of solemnity is attached to the Will because it is last testament of testator and speaks from death of testator. Therefore when suspicious circumstances are alleged every allegation cannot be treated as suspicious and if allegations are well founded, the Court has to subject the Will to a closer scrutiny. In *Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others*, . Supreme Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between plaintiff and defendant. An adversary proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all suspicious circumstances to satisfy Court's conscience that Will was duly executed by testator. For doing so the propounder is bound to offer cogent and convincing explanation of suspicious circumstances shrouding the making of Will.

11. As held by Supreme Court in *Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another*, , a circumstance would be "suspicious" when it is abnormal or is not normally expected in a normal situation or is not expected of a normal person. In a recent judgment in *Pinnaka Hanumantha Rao (Died per L.R.) and Others Vs. Garlapati Dhanalakshmi alias Andallu*, . this Court after referring to relevant law, culled out various principles with regard to proof of Will and while doing so, summarized inter alia following circumstances which can be treated as suspicious.

The execution of the Will may be surrounded by suspicious circumstances like, -

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

(b) The condition of the testator's mind may be very feeble and debilitated.

(c) The dispositions made in the Will may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate

provision for the natural heirs without reasons.

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

(e) The propounder takes a prominent part in the execution of the Will conferring substantial benefit on him.

(f) The testator used to sign blank papers.

(g) The Will did not see the light of the day for long.

(h) Incorrect recitals of essential facts.

(i) The unregistered Will challenged as forged comes from the custody of major beneficiary.

Whether Ex.A1 is proved?

12. Plaintiff examined the scribe as P.W.3, who is none other than her father. He deposed that on 05.08.1980 at the request of defendant No. 4, he went from Tanuku to Narsapur, where Sriramulu asked him to change Ex.B.1. The testator then asked defendant No. 4 to bring Challa Suryarao and Manikyam from Chittavaram. They were brought. He then deposed that Sriramulu was of opinion that his two daughters did not take care of him when he was ill, and therefore, he desires to change Ex.B.1. As instructed, P.W.3 drafted Ex.A.1, read it to him and thereafter Sriramulu signed the Will. Attestors signed the Will, which was also seen by Sriramulu. After completion of the Will, P.W.3 gave Will to Sriramulu. Ex.A.1 was attested by Challa Suryarao, Radhakrishnamurthy (defendant No. 4) and Polisetti Manikyam in that order. The last one is examined as P.W.2 to prove the Will. His version is almost similar to that of P.W.3, except one thing. It is deposed that Challa Suryarao, P.W.2 and defendant No. 4 attested the Will in that order. He also deposed that P.W.3 gave the pen for attestation and Sriramulu signed the Will after getting the pen from inside the house. Based on this evidence, it is submitted that Ex.A.1 is proved in accordance with Section 68 of Indian Evidence Act, 1872 read with Section 63(c) of Indian Succession Act, 1925. Learned Counsel for contesting defendants, however, points out that due to inconsistent statements made by P.W.1, P.W.2 and P.W.3 with regard to pen used by Sriramulu and the order in which the three attestors and scribe put their signatures on Ex.A.1 would lead to suspicion regarding the very execution of Will itself. He would urge that the entire burden lies on the propounder and it should be conclusively proved that the testator executed Will by putting signature on the Will. It is time that when Will is alleged to be forged or concocted and brought into existence after the death of testator, as a first step the execution of the Will has to be proved. The submission of learned Counsel for defendants is in accordance with law laid down by Supreme Court.

13. In Seth Beni Chand (Since Dead) Now by L.Rs. Vs. Smt. Kamla Kunwar and Others, . Supreme Court observed as follows.

It is well-settled that the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. ... By "free and capable testator" is generally meant that the testator at the time when he made the will had a sound and disposing state of mind and memory. Ordinarily, the burden of proving the due execution of the will is discharged if the propounder leads evidence to show that the will bears the signature or mark of the testator and that the will is duly attested. For proving attestation, the best evidence would naturally be of an attesting witness and indeed the will cannot be used as evidence unless at least one attesting witness, depending on availability, has been called for proving its execution as required by Section 68 of the Evidence Act. But where, ... the circumstances surrounding the execution of the will are shrouded in suspicion, it is the duty and the function of the propounder to remove that suspicion by leading satisfactory evidence.

(emphasis supplied)

14. In Kalyan Singh Vs. Smt. Chhoti and Others, . the above principles are reiterated as below.

... 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 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.

(emphasis supplied)

15. When propounder of the Will has to prove execution, i.e., factum of testator putting the signature, is it permissible for the Court to compare the admitted signature with the disputed signature on the Will propounded? Section 73 of Indian Evidence Act, no doubt, empowers the Court to compare the signature, by whom it is made with the one which is to be proved in evidence. However, in criminal cases, where prosecution has to prove the case against an accused beyond reasonable doubt and in certain civil cases such as probate proceedings and suits for declaration of title/partition based on Will, it is not safe course to compare disputed signature on the Will with the admitted signature. In The State (Delhi Administration) Vs. Pali Ram, . Supreme Court held that notwithstanding the power u/s 73 of Indian Evidence Act, Court should hesitate to base its finding

with regard to identity of handwriting in criminal case based on its own examination on comparison.

16. The position with regard to direct methods of proving handwriting was expected as under.

Indian Evidence Act recognises two direct methods of proving the handwriting of a person:

(1) By an admission of the person who wrote it.

(2) By the evidence of some witness who saw it written.

These are the best methods of proof. These apart, there are three other modes of proof by opinion. They are:

(i) By the evidence of a handwriting expert. (Section 45)

(ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question. (Section 47)

(iii) opinion formed by the court on comparison made by itself. (Section 73)

All these three cognate modes of proof involve a process of comparison. In mode (i) the comparison is made by the expert of the disputed writing with the admitted or proved writing of the person who is said to have written the questioned document. In (ii) the comparison takes the form of a belief, which the witness entertains upon comparing the writing in question, with an exemplar formed in his mind from some previous knowledge or repetitive observance of the handwriting of the person concerned. In the case of (iii) the comparison is made by the court with the sample writing or exemplar obtained by it from the person w concerned.

17. In *O. Bharatan Vs. K. Sudhakaran and another*, . following *The State (Delhi Administration) Vs. Pali Ram*, , Supreme Court held as under.

The learned Judge in our view was not right either in brushing aside the principles laid down by this Court in *Pali Ram* (supra) on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered.

18. The propounder bears the burden of proving due execution by showing conclusively that the Will bear signature or mark of testator and that the same is

attested at least by two witnesses. In view of the two binding precedents as above, the question whether the signature on the Will propounded is forged or not cannot be decided by comparison u/s 73 of Indian Evidence Act. It is not always safe especially when the Will is challenged as a forged one. In the case on hand, learned trial Judge compared the signatures and came to the following opinion.

A comparison of the signatures of the executant in Ex.B.1 with the only disputed signature of the executant in Ex.A.1 makes it clear that there was any amount of variation in the way of signing as well as the characteristics of some of the letters eg.,...and... The change in the style of writing those letters was not attributable to the growth of his age. Nor was it attributable to shivering of hand, if any, due to paralysis of Sriramulu. It is also not the evidence of the plaintiff that her father's hand shivering after paralysis stroke and if continued even after treatment. A comparison of the disputed signature with the admitted signatures of L. Sriramulu, the testator, even with a naked eye makes it clear that the same person who signed in Ex.B.1 was not the person who signed in Ex.A.1.

19. This Court after perusing admitted signature on Ex.B.1, Will, dated 12.01.1976, and the disputed signature on Ex.A.1, dated 05.08.1980 has no strong reasons to differ from the opinion as above. This Court, however, hastens to add that it is not always safe to hold that Ex.A.1 is forged only based on such comparison. In this case, however, for the reasons as follows, it must be concluded that plaintiff has failed to prove that Ex.A.1 was duly executed by Sriramulu. First defendant took a plea that Ex.A.1 is forged. Such a plea necessarily means that there was no execution of Will by Sriramulu. Therefore, as a first step, the propounder ought to prove that Ex.A.1 is executed by Sriramulu alone. Any failure to prove that Ex.A.1 is not forged would not sustain the case of plaintiff. Hence, entire burden is on the plaintiff to prove that the signature on Ex.A.1 is the same as that of admitted signature on Ex.B.1. If no such evidence is offered, u/s 114, the Court can presume that any evidence, which ought to have produced to prove the factum of genuineness of signature would have been unfavourable to the person, who propounded the Will.

20. The plaintiff filed an application to send Ex.A.1 with disputed signature and Ex.B.1 with admitted signature of Sriramulu to handwriting expert. The said application was allowed and both the documents were sent to a former Assistant Director of Forensic Science Laboratory, Hyderabad. He submitted a report opining that Ex.A.1 was forged. This opinion was not taken by the trial Court on the ground that expert was not examined. The plaintiff did not take any steps to call the handwriting expert as witness presumably because the opinion was against her. The contesting defendants did not summon handwriting expert, as they are poor and could not afford the costs. Two aspects emerge from this. Whether it is always necessary to examine the expert when the Court has to form an opinion with regard to inter alia genuineness of the handwriting? The answer must be in the negative. Section 45 of the Indian Evidence Act gives

discretion to the Court. It may form an opinion based on the expert's opinion. The provision or illustrations thereunder do not contemplate that the Court should take into consideration the expert's opinion only when expert is examined as witness. This aspect of the matter was considered by Supreme Court in *Alamgir Vs. State (NCT, Delhi)*, wherein it was held.

In fine, in *Murari Lai v. State of Madhya Pradesh* (1980) 1 SCC 704 : 1980 SC 531 (supra) this Court stated that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law that opinion-evidence of a Handwriting Expert must never be acted upon, unless substantially corroborated. We feel it expedient to record our concurrence therewith, though, however, we hasten to add that since human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination the acceptability or creditworthiness of the same depends...

21. Learned Counsel for contesting defendants did not make any effort on this point. Therefore, except clarifying the legal position, this Court is not inclined to rely on the handwriting expert. Nevertheless as observed supra, having taken leave of the Court to send Exs.A.1 and B.1 to handwriting expert and having obtained an opinion from such expert, it was incumbent on the part of the plaintiff to call the expert and examine him. Non-examination of handwriting expert would lead to an inference that the plaintiff intentionally did not call knowing fully well that Ex.A.1 would be held forged. As the burden of proving execution of Ex.A.1 was entirely on the plaintiff, failure on her part to examine handwriting expert is fatal and it must be held that Ex.A.1 is not proved notwithstanding the fact that attestor and scribe were examined as P.W.2 and P.W.3.

Whether there are suspicious circumstances?

22. In addition to doubtful execution of Ex.A.1, whether Ex.A.1 is surrounded by suspicious circumstances. One may recall the law that even if the Will is validly proved, if the circumstances in which such Will came into existence are suspicious, the same cannot be treated as last testament of the testator. It is also the law that when suspicious circumstances are alleged, it is no more a lis between propounder and caveator. It is a question of satisfaction of the conscience of the Court. Learned Counsel for respondents 2, 4 to 6 points out that (i) plaintiff and her husband took active part in the alleged execution of Ex.A.1; (ii) the signature of Sriramulu is very shaky and doubtful; it does not appear to be usual signature of the testator; (iii) plaintiff kept Ex.A.1 secret without informing defendant Nos. 1 to 3; (iv) Ex.A.1 is not registered; (v) there is no evidence to show that Sriramulu who went to Chittavaram after taking treatment for paralysis again visited Narsapur and (vi) Ex.A.1 is unnatural and takes away what was given to defendant Nos. 2 and 3; daughters of Sriramulu.

23. There cannot be any doubt that Ex.A.1 allegedly made on 05.08.1980 was

kept secret by plaintiff and her husband. It came to light only when the suit was filed on 09.09.1981. There cannot be any dispute that the signature of Sriramulu is very shaky on Ex.A.1 and it appears to be not usual signature as seen from Ex.B.1. Thirdly, Radhakrishnamurthy, defendant No. 4, who is husband of plaintiff, took active part in execution of Ex.A.1. It is he who went to Tanuku to bring P.W.3 and he alone went to Chittavaram to get the two attestors as spoken to by P.W.1 and P.W.3 himself. These are certainly suspicious circumstances. Therefore, it is for the plaintiff to remove suspicion. The information with regard to place of residence or domicile of testator after he suffered paralysis till Ex.A.1 came to existence, is almost nil or scant. P.W.1 or her witnesses have not made any attempts to adduce any evidence by producing medical record or independent witnesses as to why suddenly in August, 1980, Sriramulu chose to make another Will modifying Ex.B.1. From the evidence, it is reasonable to infer that some time in 1977 Sriramulu suffered paralysis. When he did not have any ill feeling towards defendant Nos.2 and 3 during three years, as to why he suddenly decided to change Ex.B.1 in August, 1980? No explanation is coming from P.W.1. As noticed supra, she also did not take steps to remove suspicion with regard to allegation that Ex.A.1 contains forged signature of Sriramulu. Further, it is on record that as per his wish, Sriramulu was shifted to Chittavaram few months before he died. Even then, P.W.1 and her husband kept Ex.A.1 secret. When they were so sure that defendants 2 and 3 were not deprived of anything, what prevented them from disclosing the Will especially when P.W.1 deposed that after completion of execution Sriramulu handed over Ex.A.1 to her. All these matters remain unexplained and no attempt is made by plaintiff to remove the suspicion.

24. Under Ex.B.1, plaintiff and defendants 1 to 3 are the beneficiaries. Plaintiff was given one-fourth share in item 1 of plaint "A" schedule property and half share in plaint "B" schedule property; whereas item 2 of "A" schedule property admeasuring about Acs.0.76 was equally disributed to defendants 2 and 3 (Acs.0.38 each) and no mention was made with regard to item 3 of "A" schedule property. In Ex.A.1, all these are changed. Plaintiff was given three-fourth share in item 1 of "A" schedule, half share in item 2 and three-fourth share in item 3. In addition, entire "B" schedule property, tiled house and movables were also left to plaintiff. She was asked to give five bags of paddy per year to defendants 2 and 3 each. What was given to defendants 2 and 3, i.e., Acs.0.38 each was reduced to five bags of paddy per year. Does it render Ex.A.1 unnatural?

25. reading of Exs.B.1 and A.1 together would show that bequeath under Ex.B.1 was not totally cancelled. Though Ex.A.1 is styled as a Will, it is indeed a codicil, the purpose of which is explaining, altering or adding to the dispositions made in Ex.B.1. It is part of earlier Will. As per Section 32(6) of Indian Evidence Act 32(6) : Or is made in will or deed relating to family affairs- When the statement relates to the existence of any relatioinship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family

pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised. the recitals in Ex.B.1 being a statement made by Sriramulu are relevant to understand the family affairs. In Ex.B.1, Sriramulu expressed his compassion and sympathy to defendants 2 and 3. The reason is both of them were either deserted or abandoned by their husbands in very early stage of their married life. Both of them were almost destitute having no place to go. Both of them came to Chittavaram to stay with father. Importantly, Sriramulu admits that both of them were taking care of his health and his family affairs as Sriramulu's wife died long back. Therefore, there cannot be any surprise, if defendants 2 and 3 were given Acs.0.38 each in item 2 of plaint "A" schedule property, which would have fetched them more than five bags. In spite of all such statements, in Ex.B.1, curiously in Ex.A.1, it is mentioned that when he was seriously ill, defendants 2 and 3 did not take good care of Sriramulu. In all probability, defendants 2 and 3 only took care and provided medical attendance when Sriramulu was sick. Here the evidence of P.W.1, P.W.3 and D.W.2 assumes importance.

26. Sriramulu effected partition with his two sons, Seetaramaswamy and Radhakrishnamurthy long prior to execution of Ex.B.1. Sriramulu was staying in tiled house with his two daughters, defendants 2 and 3. Seetaramaswamy had his own house and taking care of and cultivating his share of lands. Radhakrishnamurthy was a prodigal. He sold away his properties at Chittavaram, squandered it away and shifted his residence to Narsapur to join as a clerk with Marvadi businessman. Everybody admits this. From the date of family partition till execution of Ex.B.1 and thereafter till the death of Sriramulu on 16.10.1980, defendants 2 and 3 were staying with Sriramulu. There is no denial or dispute that at least till the execution of Ex.B.1 and some time thereafter when Sriramulu suffered paralysis, it is only defendants 2 and 3 who are taking care of Sriramulu. There is not even an allegation or whisper in the evidence of P.W.1 and P.W.3, that defendant No. 4 and P.W.1 were looking after patriarch. P.W.2 admits in his cross examination, that "defendants 2 and 3 used to look after Sriramulu when he was at Chittavaram". P.W.1 denied a suggestion that defendants 2 and 3 alone did service to her father-in-law. But P.W.3 (father of P.W.1) also admits that, "defendants 2 and 3 are daughters of late Sriramulu and they are living with their father only". From this, there cannot be any dispute that it is only defendants 2 and 3 who are looking after Sriramulu and taking care of his home at Chittavaram. Then why they were excluded from bequeathing all the properties. P.W.1 offers explanation that Sriramulu was annoyed because defendants 2 and 3 did not take care of testator when he was undergoing treatment at Dr.Keshav Rao Hospital. Whether such theory is probable and what are the circumstances that would improbably such theory.

27. P.W.2 made a statement that Sriramulu was weak, that he was brought to Narsapur Hospital where he suffered paralysis. P.W.1 curiously takes a different stand from that of P.W.2 and P.W.3. She gave evidence stating that her father-in-

law stayed only at Narsapur where he was attacked with paralysis. This is obviously a statement made in desperation and a blatant lie. It is nobody's case that Sriramulu was staying at Narsapur with defendant No. 4. Such an allegation is not made in plaint. The evidence of D.W.2 (defendant No. 3) is that after death of her husband, he stayed with her father at Chittavaram and that after she was deserted second defendant also came to live with father. She also deposed that after their marriage, plaintiff and her husband shifted to Narsapur. She and second defendant attended to their father when he was in hospital, that second defendant used to prepare food and coffee for patient and bring the same to hospital and that she used to serve food in hospital. She also complained that defendant No. 1 and his wife did not go to hospital to see their father. She also complained that P.W.1 and defendant No. 4 never attended Sriramulu nor they brought food at any time. Regarding medical expenses, she deposed that one year prior to hospitalization Sriramulu sold Acs.3.00 of land and got an amount of Rs. 30,000/-, which was spent for medical treatment and family expenses. According to her, even funeral rites and obsequies were performed with that money. According to her, defendant No. 1 and defendant No. 4 came to Chittavaram only after knowing the news of death of Sriramulu. The deposition of D.W.2 sounds very natural. The evidence of D.W.2, in the light of admissions made by P.W.2 and P.W.3 that Sriramulu was living at Chittavaram with his two daughters, will probablise the case of D.W.2 that it is she and defendant No. 2 who attended on their father, when he was undergoing treatment at Narsapur. It is quite probable that the two ladies abandoned by her husbands developed more attachment to their father who was providing food and shelter to them and so as to pay gratitude served him when he was in hospital, especially when under Ex.B.1 they got agricultural land in an extent of Acs.0.38 each.

28. The version of P.W.1 is improbable for the simple reason that some time after partition of property, defendant No. 4 sold away the property and shifted to Narsapur to eke out a living working with a Marvadi businessman. Naturally, there would be no love lasts between Sriramulu and defendant No. 4, who is admittedly known to squander away properties. That is the reason why even under Ex.B.1 property was not given to defendant No. 4 but to the plaintiff. Such a mention is found even in recital of Ex.B.1. Therefore, this Court has strong reasons to disbelieve P.W.1 that father-in-law was staying with her and in appreciation of her service during the period of convalescence, executed Ex.A.1 bequeathing major share of property to her. In any event, there is no evidence much less cogent and convincing evidence adduced by her to show that it is she who rendered service and provided medical attendance when Sriramulu was sick. For these reasons, this Court holds that the Will, Ex.A.1, which is surrounded by suspicious circumstances as enumerated above and cannot be accepted as last will and testament of late Sriramulu.

29. In the result, on analysis of rival pleadings and evidence as above, this Court does not find any reason to interfere with the Judgment and decree of trial Court. The same is confirmed and the appeal is dismissed with costs.