

(2009) 03 AP CK 0012

In the Andhra Pradesh High Court

Case No : A.S. No's. 1887 of 1988 and 1433 of 1989

Malampati Suryamba and Others

APPELLANT

Vs

Venigalla Koteswaramma and Others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 67, 68, 73
Hindu Succession Act, 1956 — Section 15, 16
Succession Act, 1925 — Section 66

Citation : (2011) 1 ALD 154 : (2010) 1 ALT 228

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

Bench : Single Bench

Advocate : K. Sesharajyam, in A.S. No. 1887 of 1988 and Ghanta Rama Rao, in A.S. No. 1433 of 1989, for the Appellant; K. Sesharajyam, Respondent No. 5 to 7 in A.S. No. 1433 of 1989, D.V. Nagarjuna Babu and Ghanta Rama Rao and 3 in A.S. No. 1887 of 1988, for the Respondent

Judgement

V.V.S. Rao, J.—These two appeals are being disposed of by this common judgment as they arise out of judgment and decree in O.S. No. 35 of 1980, dated 29-04-1988, of the Court of the Principal Subordinate Judge, Narasaraopet, Guntur District. A.S. No. 1887 of 1988 is filed by defendants 16, 17 and 18, and A.S. No. 1433 of 1989 is filed by defendants 4, 13 and 14. By impugned judgment learned trial Judge decreed suit filed by first respondent in both appeals for partition and possession of plaint A, B and C schedule properties, rejecting claim of appellants in A.S. No. 1433 of 1989, which was based on the Will and also rejecting the claim of the predecessor of appellants in A.S. No. 1887 of 1988, which was based on agreement of sale in respect of item No. 1 of plaint A schedule properties. In these appeals, for convenience, parties are referred to by their status in the suit.

2. Plaintiff - Koteswaramma and defendants 1 to 3, Chandra Seethamma, Malempati Radha Krishna Murthy and Chandra Ranganayakamma, are children of Malempati Kondaiah through his first wife. She passed away in 1945. In 1950

there was a partition between Kondaiah and second defendant. Plaintiff A schedule properties fell to share of father. After death of his first wife, Kondaiah married Annapurnamma (Kondaiah's first wife's name is also Annapurnamma.), and settled plaintiff schedule properties on her under registered documents. Kondaiah passed away in 1971. After his death Annapurnamma was living separately, and she suffered paralysis in March 1973. Her servants were helping her in cultivating the lands. Plaintiff "A" schedule land was cultivated by defendants 5 and 6 on lease. Due to impending land ceiling legislation Annapurnamma started encashing her property by selling agricultural lands. She died on 17-06-1978. After her death, plaintiff and defendants 1 to 3 are equally entitled to all the properties of Annapurnamma. Defendant No. 4, who is brother of Annapurnamma, created differences among these four, and therefore, they could not agree for partition. At his behest, there was an arbitration agreement executed in favour of his people. Though he has no right over the properties, he took thumb impressions of Annapurnamma after her death on blank papers with an intention to make wrongful gain.

3. Defendants 2 and 3 filed written statement supporting the plaintiff. Defendant No. 4, who is brother of Annapurnamma, filed written statement, Defendants 14 and 15 and defendants 5, 6, 12 and 13 filed memos adopting the written statement of defendant No. 4. The averments and allegations in main written statement are as follows. Kondaiah married Annapurnamma after the marriage of second defendant, as they could not get on well. There was a partition between father and son due to misbehaviour of second defendant. Due to this, late Annapurnamma was not on good terms with the plaintiff or defendants 1 and 3 during her lifetime. Mother of Annapurnamma, Chapalamadugu Punnamma, who was more attached, was taking care of her daughter. As Annapurnamma was not getting expected income from agriculture, she sold some properties to meet her necessities. On 05-11-1976 Annapurnamma sold item No. 1 of plaintiff A schedule properties to defendant No. 15 under agreement of sale and delivered possession to him. The purchaser leased out the same to defendants 5 and 6 for a rent of Rs. 250/- per year for a period of two years from 1977 to 1979. The lessees enjoyed the land and paid rent to defendant No. 15. After expiry of the lease, the land was leased out to Chandra Audinarayana. Defendant No. 4 also alleged that Annapurnamma executed a Will on 15-06-1978 in sound and disposing state of mind bequeathing her property in favour of her mother, Punnamma -defendant No. 14, and Kilaru Gopala Rao -defendant No. 13. She also directed her mother to execute a registered sale deed in favour of defendant No. 15 in respect of item No. 1 of plaintiff A schedule property after receiving balance of sale consideration and discharge debts with that consideration.

4. In his written statement fourth defendant further alleged that Punnamma took possession of item Nos. 2, 3, 5, 6 of "A" schedule and a portion of item 7 consisting of middle house, three tiled Verandas, and tiled house in northeastern corner in accordance with the will. She cultivated items 3 and 5 by transplanting paddy and castor seeds. Other legatee Kilaru Gopala Rao took possession of item

4, which he cultivated earlier, and portion of item 7 with a kitchen. Kilaru Gopala Rao along with his wife served Annapurnamma for three years before her death and had been residing in that portion. Punamma is mother of defendant No. 4 and defendant No. 12 is his son. Annapurnamma did not own and possess items 1 to 4 and items 8 to 10 of plaintiff B schedule properties. She was borrowing money from others for medical treatment. Defendant No. 11 also filed a separate written statement denying plaintiff averments.

5. Plaintiff filed rejoinder to the written statement by defendant No. 4 denying the agreement of sale dated 05-11-1976 executed by Annapurnamma in favour of defendant No. 15 as well as the lease of item No. 1 of plaintiff A schedule by him to defendants 5 and 6. She also denied the Will dated 15-06-1978 executed by Annapurnamma in favour of her mother and defendant No. 13. She alleged that Annapurnamma was not in sound and disposing state of mind, that she had no occasion or necessity to execute Will, that she did not execute any Will, much less, the one referred to in the written statement of defendant No. 4, that alleged Will is rank forged and fabricated for the purpose of the suit, and that alleged dispositions in the Will are made to believe for the personal benefits of the alleged legatees. She also alleged that the Will was not acted upon and the estate of Annapurnamma was never apportioned as per the recitals in the alleged forged Will. Allegation that plaintiff and defendants 1 to 3 had no good relations with Annapurnamma was denied. They disputed the allegation that Punamma was taking care of her daughter, contending that she herself was old, and therefore, she was not in a position to help her daughter.

6. Based on the above pleadings learned trial Judge framed as many as twelve issues which are as below.

1. Whether the Will dated 15-06-78 pleaded by defendants 4 and 11 is true, valid and acted upon?
2. Whether item I of A schedule was pleaded out by late Nalampati Annapurnamma to defendants 5 and 6 and their tenancy is subsisting and whether they are necessary parties to the suit?
3. Whether item I of A schedule was sold by late Malampati Annapurnamma to Malempati Satyanarayana Vara Prasad and put in possession of the same?
4. Whether Chapalamadugu Punamma is a necessary and proper party to the suit?
5. Whether the plaintiff is entitled to the partition and if so what are the properties liable for partition and to what share is the plaintiff entitled?
6. Whether late Malampati Annapurnamma died owned and possessed of items 1 to 4 and 8 to 10 of plaintiff B schedule?
7. Whether the plaintiff and defendants 1 to 3 are entitled to the plaintiff A and B schedule properties and for partition of the same?

8. Whether the suit is bad for misjoinder and non-joinder of parties?
9. Whether the 12th defendant mortgaged late Malampati Annapurnamma's gold chain and he is not a necessary party to the suit?
10. Whether the defendants 5 and 6 are liable to pay the lease amount?
11. Whether the plaintiff is entitled to mesne profits, if so at what rate and from whom?
12. To what relief, if any?

7. During the trial, the plaintiff examined herself as P.W.1 and Ex.A-1 was marked. One C.M. Reghneli was examined as a handwriting expert. Plaintiff appears to have obtained the Xerox copies of the Will and Xerox copies of the documents allegedly containing signature of Annapurnamma and sent to P.W.2. He gave his opinion in Exs.C-7 to C-10. He was brought to the Court by the plaintiff herself. Defendant No. 4 gave evidence as D.W.1. Wife of defendant No. 15, Suryamba, gave evidence as D.W.6 and the two legatees under the Will deposed as D.W.4 and D.W.5. In addition to this evidence, D.W.2, D.W.3, D.Ws.7 to 13 were also examined besides marking Exs.B-1 to B-18, Ex.X-1 and Exs.C-1 to C-15. Ex.B-9 dated 15-06-1978 is the Will executed by Annapurnamma in favour of defendants 13 and 14. Ex.B-10 is agreement of sale executed by Annapurnamma in favour of defendant No. 15, who is represented by defendants 16 to 18 in the suit after his death, Exs.B-4 to B-7 are sale deeds executed by Annapurnamma during 1971 to 1974 and Exs.B-11 to B-17 are cist receipts.

8. On considering the oral and documentary evidence, learned trial Court disbelieved Ex.B-9 holding that it is not true, that it is fabricated and that it is surrounded by suspicious circumstances. The sale of item No. 1 of plaintiff's schedule in favour of defendant No. 15 by Annapurnamma was also not believed and it was held that the same is fabricated document. Thus, the case of the parties circles round Ex.B-9 - Will and Ex.B-10 agreement. All other issues or points urged and to be considered are only in relation to these two documents. Hence, the two questions that require consideration are.

1. Whether Ex.B-9 - Will, dated 15-06-1978 is true, valid and binding on plaintiff and defendants 1 to 3?

2. Whether Ex.B-10 - agreement of sale, dated 05-11-1976, executed by Annapurnamma in favour of defendant No. 15 represented by LRs - defendants 16 to 18, is true, valid and binding on plaintiff, defendants 1 to 3 and LRs of defendant No. 14 - Punnamma?

9. Before considering these two points, the relationship between the parties to the suit admitted by all may be noticed. Plaintiff and defendants 1 to 3 are children of Malempati Kondaiah through his first wife. After death of his first wife, Kondaiah married Annapurnamma. She, defendant No. 4, and defendant No. 16 (wife of defendant No. 15), are children of defendant No. 14 - Chapalamadugu

Punnamma. Defendant No. 15 - Malempati Satyanarayana Varaprasada Rao is nephew of Punnamma, that is to say, the father of defendant No. 15 and Punnamma are brother and sister. Defendants 16 to 18 are wife and children of defendant No. 15, who died during pendency of the suit. In addition to this relationship, some of the witnesses who gave evidence are also related to Kondaiah, Punnamma and Satyanarayana Varaprasada Rao. Indeed, as seen from the evidence on record, most of the families of Kammavaripalem Village in Guntur District are closely related by marriage. This is not disputed or denied by the learned Counsel for rival parties.

10. In Re Point No. 1: The suit for partition was opposed by defendant No. 4 and his mother defendant No. 14 on the ground that Annapurnamma executed Ex.B-10 - agreement of sale, in favour of defendant No. 15. The suit was also opposed alleging that Annapurnamma executed Ex.B-9 - Will on 15-06-1978 in a sound and disposing state of mind bequeathing all her properties to Punnamma and Kilaru Gopala Rao (defendant No. 13). Annapurnamma died on 17-06-1978 after a long ailment due to paralysis. There is no serious dispute that Annapurnamma suffered paralysis in March 1973. Hence, the propounder of the Will have to prove that Ex.B-9 was executed by the testator in a sound and disposing state of mind and that the same is not vitiated by suspicious circumstances, some of which are pointed out before the lower Court and some of which are pointed out before this Court.

11. Law regarding proof of Will is well settled. Section 68 of the Indian Evidence Act, 1872 (Evidence Act, for brevity), mandates that if a document is required by law to be attested, it shall be proved by examining at least one attesting witness called for the purpose of proving execution. Section 66 of the Indian Succession Act, 1925 (Succession Act, for brevity), requires a Will to be attested at least by two witnesses. Therefore, so as to be valid bequeath, the propounder has to prove that Will has been executed by the testator in a sound and disposing state of mind and must also prove by examining at least one attesting witness that the Will has been duly attested. Mere proof of the Will as noticed hereinabove, is not an end in itself. When the caveator challenges the Will on the ground that it is forged, that Will is an unnatural bequeath that the propounder of the Will took active part in execution of Will and that execution of Will is surrounded by other suspicious circumstances, burden shall be on the propounder of the Will to explain and remove all such suspicious circumstances to the satisfaction of the Court. When suspicious circumstances are alleged or when surrounding circumstances are suspicious, the lis would be no more between the two warring groups. The Court has to satisfy its conscience and come to the conclusion that the Will propounded is truly the last testament of person who died. The law in this regard is well settled (see Amara Venkata Subbaiah and Sons and Others Vs. Shaik Hussain Bi and Others,). A reference may however be made to some of the relevant authorities.

12. In H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, , it is laid

down that the onus is on propounder of proof of essential facts, which are: (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. It was also held that 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.

13. In *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* (3) AIR 1064 SC 529, a Constitution Bench of Supreme Court approved the law in *H. Venkatachala Iyengar* (2 supra), 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.

14. 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*, , and *Shashi Kumar* (3 supra) also Supreme Court reiterated law in *H. Venkatachala Iyengar* (2 supra).

15. 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 ceased

to be a simple Us between plaintiff and defendant. An adversary proceeding in such cases becomes a matter 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.

16. As held by Supreme Court in *Indu Bala* (4 supra), 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 *H. Venkatachala Iyengar* (2 supra), Supreme Court inter alia pointed out that when the disposition in the Will appears to be unnatural, improbable or inferior in the light of relevant circumstances and when propounder took prominent role in execution of Will and received substantial benefit, that itself is treated as suspicious circumstance attending execution of Will. Here it may be mentioned that though in subsequent judgments, Supreme Court held that mere exclusion of a nearest relative from bequeath by itself does not render the Will suspicious, but in connection with attending circumstances, it would lead to suspicion.

17. 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.

6. 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.

18. In this case, defendants 4, 13 and 13 examined scribe of Ex.B-10 as D.W.7.

D. Ws.8 and 13 are attestors. The two beneficiaries of the Will gave evidence as D.W.5 (Punnamma) and D.W.4 (Gopala Rao). Defendant No. 4 was examined as D.W.I. Relying on this evidence, learned Counsel for the appellants in A.S. No. 1433 of 1989 submits that all the witnesses spoke consistently proving the Will and all the attestors signed Ex.B-9 after Annapurnamma signed the same. He also submits that Annapurnamma did not suddenly decide to execute the Will. Four months prior to execution of Will, she had an idea to execute the Will and she had reasons to exclude her stepchildren, defendants 1 to 3, from bequeath because they did not treat her properly before and after death of Kondaiah. The witnesses examined are impartial witnesses known both to the parties, and therefore, their evidence has importance. On the contrary, learned Counsel for the plaintiff besides pointing out various suspicious circumstances surrounding execution of Ex.B-9, sought to impeach the evidence of D.Ws. 2, 3, 13 as well as D.Ws. 1, 4 and 5.

19. D.W.I is son of D.W.5, D.W.4 was given some property under Ex.B-9. They deposed that on 15-06-1978, which was a rainy day, Annapurnamma executed Will in sound and disposing state of mind. D.W.I also stated that five or six months prior to her death, testator expressed desire to execute Will bequeathing property in favour of D.W.5 and that he did not make any preparations nor called scribe/attestors on that day on the request of Annapurnamma. This evidence of D.W.I is also supported by the evidence of D.Ws. 4 and 5. Much importance cannot be granted because they are interested witnesses. But the fact remains that D.Ws. 1 and 5 and D.W.4 were present when the Will was executed. This shows that two legatees under the Will took active part in execution of the Will. It is in the evidence of D.W.I that after Will was scribed by D.W.2 and that Kilaru Sitaravamma took the thumb of Annapurnamma and pressed on the sheets when Rama Rajyamma held Annapurnamma. This would certainly create a doubt with regard to health condition of the testator. Be that as it is, the evidence of the scribe and two attestors also does not inspire confidence in the Court for the following reasons.

20. D.W.I is brother of the testator and son of Punnamma, major beneficiary under Ex.B-9. He is also related to defendants 5, 9, 10 and 15. Defendant No. 12 is his son. He has very high stakes, because if ultimately the bequeath is held to be proved, he along with his son would be getting the property after death of the legatee. By the time he gave his evidence he was about 50 years and appears to be well aware of the affairs of Malempati and Chapalamadugu families. He admits that testator suffered paralysis in March 1973. He also admits that testator was not able to efficiently look after herself, and therefore, she was taking assistance of Punnamma. To what extent paralysis affected Annapurnamma? There is no evidence on this aspect. But, from the evidence of D. W.1 himself, it can be inferred that at least on the date of execution of Ex.B-9 on 15-06-1978 Annapurnamma was not able to get up and was not able to put thumb impression on her own. In his cross-examination, he admits that after Ex.B-9 was scribed by D.W.2, Sitaravamma took thumb of Annapurnamma and pressed

on the sheets while Rama Rajyamma held testator. It is, therefore, probable that Annapurnamma was not able to get up, that she was lifted and made to sit by Rama Rajyamma and Sitaravamma took thumb of Annapurnamma and pressed on the sheets. This would create any amount of doubt. Secondly, even though the Will was executed in his presence, D.W.1 says that he did not see the Will at all after the execution and that only after the suit was filed, he gave it to the Advocate. Till then the Will was kept in the house of Annapurnamma. D.W.I himself brought the white papers on which Ex.B-9 was scribed, and according to him, Annapurnamma had decided three months prior to Ex.B-9 to execute the Will. This aspect of the matter has not been corroborated by any other witness. Thirdly, according to the evidence of scribe, D.W.2, he wrote the contents of Ex.B-9 on instructions from the testator, that he used a fountain pen for writing the Will, and that after completing, Annapurnamma put her thumb impression, whereafter, D.W.3, D.W.13 and one Bolepalli Rajeswar Rao attested the same. Lastly, D.W.2 signed as a scribe. He is not a regular document writer and according to him now and then he used to write legal documents. He also admits that Sitaravamma took thumb impression of Annapurnamma with mascara (katuka, in telugu) on all the three sheets on the right side. He also admits that after thumb impression was taken, there was excessive application of black marks and impressions here and there without clear ridge marks. D.W.3 is an attester. He deposes that after Ex.B-9 was scribed as per dictation of Annapurnamma, it was read out and she put her thumb impression. He also says that Sitaravamma helped Annapurnamma in putting her thumb impression. D.W.13 is another attester. He gives an improved version. According to him, in spite of paralysis, Annapurnamma in putting her thumb impression. D.W.13 is another attester. He gives an improved version. According to him, in spite of paralysis, Annapurnamma was able to sit and walk in the house, that she herself put thumb impression. He reveals an interesting aspect of the matter. When D.W.I says that three months prior to execution of Ex.B-9, Annapurnamma had a desire to execute the Will, D.W.13 says that fifteen days prior to Ex.B-9 testator informed him that she wants to execute a Will. He also says that execution of Will was not revealed to anybody for avoiding unnecessary tensions between the families. The evidence of scribe and two attestors is certainly inconsistent with the version of D.W.I, who along with his mother-D.W.5, took active part in execution of the Will. Punnamma as D.W.5 deposes that Annapurnamma is a signatory, but as she was laid with paralysis, she put her thumb mark. Admittedly Annapurnamma is a signatory. Till she suffered paralysis she was subscribing her signature. After March 1973, she executed Exs.B-5, B-6, B-7 and B-10 sale deeds in favour of others in which it is mentioned that as she suffered paralysis she is not able to subscribe signature and, therefore, she is putting her thumb impression. In Ex.B-9 it is mentioned that Annapurnamma's becoming weak day by day due to paralysis but there is no mention that for this reason she is putting her thumb impression.

21. To prove the allegation that defendant No. 4 obtained thumb impressions of

Annapurnamma after she died and used those blank papers, plaintiff examined P. W.2 C.M. Regheleni. In his evidence, he deposed that he is an expert in fingerprints as well as handwriting for forty years and giving opinion and evidence in Courts. When P.W.2 came to witness box he was shown Ex.X-1, which is a sheet of paper containing specimen handwriting of D.W.2 (scribe of Ex.B-9). In the opinion of P.W.2, Ex.X-1 contains free handwriting of D.W.2 whereas writing in Ex.B-9 is very closely and meticulously written, that it is not even spaced. Nextly he deposed that on the first two sheets of Ex.B-9 there are double thumb impressions made one on another and that thumb impressions were taken earlier to the writing contained in Ex.B-9. In cross-examination he admits that he did not go into the aspect of considering whether thumb impressions on the disputed documents as well as admitted documents are by the same person. According to him thumb impressions on Ex.B-9 are of dead person. P.W.2 was not appointed by the Court to examine Ex.B-9 Will. Plaintiff herself obtained Xerox copies of Ex.B-9 and approached P.W.2 to get opinion as to whether thumb impressions on Ex.B-9 are of dead person or of living person. When he was in the witness box he was asked to give opinion about the handwriting in Ex.X-1.

22. Learned Counsel for defendant No. 4 submits that the evidence of P.W.2 and documents marked by him must be rejected as unreliable. According to him, a person who comes to the Court on his own as an expert is not trustworthy. He relies on the observations made by Supreme Court in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* (supra) wherein it was observed that, "... expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence." Applying this rule and after perusing the evidence of P.W.2, this Court is of considered opinion that evidence of P.W.2 is of no assistance. Furthermore except P.W.2's opinion, no other witness was examined to prove the allegation that signatures of Annapurnamma were obtained on Ex.B-9 prior to its preparation. While cross-examining D.W.1, D.W.2, D.W.4 and D.W.13, no serious effort was made to extract anything that thumb impressions were obtained on white papers after Annapurnamma died. Therefore theory set up by plaintiff remains unproved. When she was so confident that thumb impression on Ex.B-9 was forged, nothing prevented her to obtain a court order to send Ex.B-9 and Exs.B-5 to B-7 containing thumb impressions to handwriting expert. Instead of doing so plaintiff on her own obtained copies of Will and approached P.W.2 who admittedly examined document only with reference to the question whether thumb impression of Ex.B-9 is of a dead person or of a living person. Therefore plaintiff cannot derive any support from the evidence of P.W.2.

23. It is axiomatic that mere proof of a Will in accordance with law is not an end itself. If the caveator challenges the Will on the ground that it is surrounded by suspicious circumstances, propounder has to remove all suspicious circumstances and come forward with satisfactory explanation. Because when once suspicion is

raised, question is not mere proof of the Will, the question is whether proposed Will is the last testament of dead person. Learned Counsel for plaintiff has pointed out the following circumstances as suspicious. (i) Ex.B-9 was scribed by D.W.2 with fountain pen. There is no reason why mascara was used to affix thumb impression; (ii) Thumb impressions are merged and ridges of fingers are not clear; (iii) Though there are professional document writers available in the Village, D.W.2 was called without any reason; (iv) In Ex.X-1 (it is the specimen writing of D.W.2) writing is in free manner but in Ex.B-9 effort was made to adjust space on papers and lot of space is left between contents of document and thumb impression; (v) Scribe, attestors and legatees are interested persons; (vi) When Annapurnamma suffered partial paralysis in March 1973 and was not be able to attend her daily affairs she would not have waited till 1978 to execute Ex.B-9; (vii) Admittedly testator is signatory but no reasons are mentioned in Ex.B-9 why she put her thumb impression; (viii) Bequeath excluding plaintiff and defendants 1 to 3 and bequeath in favour of Octogenarian mother and farm servant is unnatural; (ix) Propounders of the Will took active part in execution of the Will; (x) There is lot of inconsistency in the evidence of D.Ws. 1 to 5 and D.W.13 with regard to exact time of execution of Ex.B-9 and method and manner of affixing thumb impression by Annapurnamma; and (xi) Ex.B-9 was not disclosed and kept secret till the suit was filed.

24. Learned Counsel for defendant No. 4 and others submits that evidence of D.Ws. 1 to 5 and 13 is consistent and having regard to the fact that they were giving evidence after lapse of about 10 years, minor variations have to be ignored. Nextly he would urge that D.W.2 who scribed Ex.B-9 was in the habit of leaving some space at the end of each page and that itself cannot lead to any suspicion. After she suffered paralysis, Annapurnamma used to put her thumb impression and, therefore, in June 1978, she could not have put her signature on Ex.B-9. She had strained relations with stepchildren and hence it is not unnatural to give property to mother with the expectation that the property would go to relations of testator after her death and the death of legatee. Relying on the following observations of Supreme Court in *S. Gopal Reddy Vs. State of Andhra Pradesh*, , learned Counsel submits that when the execution of Ex.B-9 is proved by examining persons who saw Annapurnamma affixing her thumb impression, Ex.B-9 cannot be rejected on imaginary circumstances calling them suspicious.

Section 67 of the Evidence Act enjoins that before a document can be looked into, it has to be proved. Section 67, of the course, does not prescribe any particular mode of proof. Section 47 of the Evidence Act, which occurs in the chapter relating to "relevancy of the facts", provides that the opinion of a person who is acquainted with the handwriting of a particular person is a relevant fact. Similarly, opinion of a handwriting expert is also a relevant fact for identifying any handwriting. The ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or in otherwise qualified and competent to express his opinion as to the handwriting. There are some other modes of proof of documents also as by

comparison of the handwriting as envisaged u/s 73 of the Evidence Act or though the evidence of a handwriting expert u/s 45 of the Act, besides by the admission of the person against whom the document is intended to be used. The receiver of the document, on establishing his acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document. These modes are legitimate methods of proving documents but before they can be accepted they must bear sufficient strength to carry conviction.

25. In *H. Venkatachala Iyengar* (2 *supra*), Supreme Court pointed out that when signature of testator is very shaky and doubtful, when testator's mind appears to be feeble and debilitated leaving a doubt regarding mental capacity of the testator, when dispositions in the Will appear to be unnatural, improbable or unfair, the Court should be reluctant to treat the document as the last Will of testator. D.W.I admits that four to five months prior to execution of Ex.B-9, testator had a desire to execute Will in favour of her mother. Testator suffered paralysis some time in March 1973. Evidence is adduced by contesting defendants that Punnamma and Gopala Rao were serving paralysis-patient why then Annapurnamma kept quiet till 15-5-1978 and executed Ex.B-9 on 17-6-1978. When she expressed desire four or five months prior to June 1978, what prevented Annapurnamma to execute Will? These are all not explained. Secondly it is D.W.I, D.W.5 and D.W.4 who are taking care of testator. They took active part in execution of the Will. D.W.I brought white papers from a shop and in all probability D.W.4 called the scribe and attestors. The active involvement of ultimate beneficiaries of Annapurnamma would certainly create a suspicion. Further D.W.I admits that at the time of execution of Will, his another sister Kilaru Sitaravamma and one Rama Rajyamma, another close relative, were also present. An inference can, therefore, be drawn that all the relations from her father's side were present and it is not possible to draw an inference that Annapurnamma executed Ex.B-9 on her free will in sound state of mind. Immediately two days after Ex.B-9 died would be ample proof that on 15-6-1978 she was not able to get up and she was seriously ill. D.W.I and D.W.2 admit that Annapurnamma was lifted by Rama Rajyamma and Sitaravamma took thumb impression of Annapurnamma and pressed on the sheets. It only means that Annapurnamma did not, herself, put her thumb impression. Thus the execution of Ex.B-9 Will itself is suspicious.

26. As rightly pointed out by learned Counsel for plaintiff, thumb impressions are smudged. The ridges are not clear. Secondly when admittedly D.W.2 used fountain pen why mascara was used for obtaining thumb impressions? Ordinarily in Villages fountain pen is used to apply ink on the thumb for obtaining impression. No explanation is forthcoming for this. Ex.B-9 Will contains three sheets. Entire contents could have been written on less than two sheets but three sheets were used leaving at least 1/3rd space in every page. In addition to this, there is a gap between thumb impression and contents of each page. In comparison with Ex.X-1, writing of D.W.2 on Ex.B-9 shows that a strained effort

was made to adjust the space so that an impression is given to the effect that testator put thumb impression after completion of each page. These are not at all explained by propounders of the Will. Disposition in favour of D.Ws.4 and 5 excluding P.W.1 and defendants 1 to 3 by itself is not unnatural because there is evidence on record to show that after marriage of defendant No. 2, Kondaiah again married Annapurnamma, that by that time his three daughters were married, that except one daughter two other daughters were living separately and that the house of Punnamma (D.W.5) was adjacent to Annapurnamma's house would lead to an inference that relations between Annapurnamma and her stepchildren were certainly strained and in the absence of any evidence to show that plaintiff, her sisters or her brother were taking care of Annapurnamma, dispositions in Ex.B-9 cannot be treated as unnatural. D.W.5 and D.W.4, propounders of the Will, and D.W.I failed to remove all the suspicious circumstances and also failed to satisfy judicial conscience. Therefore, this Court holds that Ex.B-9 Will is not last testament of Annapurnamma, it is not valid and it is not binding on plaintiff or defendants 1 to 3.

27. In Re Point No. 2: Annpurnamma acquired absolute title under Exs.B-2 and B-3, Settlement deeds, executed by her husband, Malempati Kondaiah. Item Nos. 1 to 7 of plaint-A schedule immovable properties are covered under these settlement deeds. It is the case of defendant No. 4 and defendants 16 to 18 (legal representatives of defendant No. 15) that Acs.6.00 of agricultural land in Kammavaripalem, H/o. Pothavaram village (Acs. 2.19 out of Acs. 8.19 in D. No. 13-A, Acs. 3.81 out of Acs. 16.57 in D. No. 13-B), which is item No. 1 of plaint-A schedule, was sold by Annapurnamma under Exs.B-10 to defendant No. 15, M. Satyanarayana Vara Prasada Rao, who is husband of defendant No. 16. There cannot be any dispute that alienations made by a person before execution of Will bequeathing property to others would not be effected even if Will refers to such properties. Similarly if the properties of a person are self-acquired properties such person has an absolute right to deal with property in any way he/she likes and any intestate succession cannot affect the sales made by persons before succession opens. As per Section 15 read with Section 16 of Hindu Succession Act, 1956, on the death of Annapurnamma, plaintiff and defendants 1 to 3 would succeed to her property because she died issueless. The succession however cannot be in respect of the property, which is subject matter of Ex.B-10 agreement executed by Annapurnamma about two years prior to her death, under which she had sold item No. 1 of plaint-A schedule to defendant No. 15. The focus is, therefore, on the validity of Ex.B-10 agreement.

28. It may be mentioned here that when the suit was filed in July 1978, plaintiff did not allege that Ex.B-10 is invalid. Indeed there was no reference to Ex.B-10 agreement. As noticed supra, defendants 2 and 3 filed written statement supporting plaintiff. This written statement also does not make any reference to Ex.B-10 agreement. Plaintiff filed rejoinder some time in October 1980, denying allegation of Defendants 1 and 15 that Annapurnamma sold item No. 1 of plaint-A schedule property under Ex.B-10 agreement after receiving consideration.

Other allegations in relation to Ex.B-10 were also denied. There is not even a whisper that defendant No. 15 had no financial capacity to pay sale consideration under Ex.B-10. There was no specific allegation made in rejoinder that Ex.B-10 was forged document or it was fabricated on the blank papers after obtaining thumb impressions of Annapurnamma. These pleadings are very important while considering Ex.B-10 because learned trial Judge among others gave following reasons; while rejecting Ex.B-10.

... What is the necessity of 14th defendant's close relation 15th defendant to purchase land at a far off place at Kammavaripalem, when he is a native and person having substantial property at Nimmagadda, Divitaluk. It is not that he wanted to shift immediately and cultivate the land here and settle here itself. In fact he lived and died at Nimmagadda taluk and as stated D.W.6 also even after the death of 15* defendant, she D.W.6 came from Nimmagadda all the way to give evidence. It shows that they have no intention to come to Kammavaripalem.

...For the reasons best known to him D.W. 9 i.e., 5th defendant speaks that he along with 6th defendant for 2 years and thereafter Adinarayana cultivated it. D.W.9 admits that Annapurnamma's husband Kondaiah is his wife's maternal uncle. The plaintiff also admits that 5th defendant was on the land when Annapurnamma died. This fact of continuation by defendant No. 5 and defendant No. 6 could not be false because soon after the death of Annapurnamma, the suit has been filed. For the reasons best known, 5th defendant as D.W.9 says that he cultivated the land under 15th defendant. For all these reasons there is absolutely no truth in saying that 15th defendant purchased Acs.6.00 of land from Annapurnamma in a natural way and he took possession of the same. It is quite possible that to get the property away from the reach of her natural legal representatives, Ex.B-10 agreement would have been fabricated had it been true. There is no reason why for all these days, the document has not been registered. We can understand if the land is sold to some third parties as in the case of Ex.B-4 to B-7. In this case of Ex.B-10, the agreement is in favour of brother-in-law of Annapurnamma i.e., another son-in-law of 14th defendant.

29. Ex.B-10 was proved by the vendees by examining defendant No. 16 (wife of defendant No. 15) as D.W.6, scribe of agreement as D.W.7, attestor as D.W.8 and defendant No. 6 as D.W.9. D.W.6 is sister of Annapurnamma and wife of defendant No. 15. She stated that she was present when agreement was executed by Annapurnamma by taking Rs. 40,000/-. Possession was delivered on the same day. D.W.7, who is son of paternal aunt of D.W.6, scribed the agreement and was attested by D.W.8. According to D.W.6, after taking possession of land, defendant No. 15 leased out the land to D.W.9 and defendant No. 6 for joint cultivation on a lease amount of Rs. 250/- per acre. She also deposed that cist was paid by them under Exs.B-11 to B-17 and after death of her husband (defendant No. 15), her son paid cist. She also spoke that her husband sold Acs. 0.75 of land to Matangi Kotaiah (D.W.10) and Acs.0.50 to Matangi Lakshmaiah raising Rs. 16,000/- and sale deeds were registered in other

favour in 1983. In addition to this, defendant No. 15 also borrowed Rs. 19,000/- from Devabhaktuni Ranga Rao (D.W. 11) under promissory note, Ex.B-18. Though her husband thought of getting a sale deed, in 1977 cyclone there was heavy loss as a result of which sale deed could not be obtained. After expiry of tenancy of defendants 5 and 6, land was leased out to Chandra Adinarayana for two years and thereafter to Chandra Satyam. In the cross-examination of D.W.6, it was extracted from her that D.W.7 and D.W.8 (scribe and attesor of Ex.B-10) and defendant No. 5 are related to defendant No. 15. There was no suggestion of forgery nor a suggestion that defendant No. 15 had no capacity to purchase the land. A suggestion was however made that Ex.B-10 is fabricated document.

30. The evidence of D.W.6 is corroborated by the evidence of D.Ws.7, 8, 9, 10 and 11. Their evidence is consistent and supportive of the evidence of D.W.6 with regard to execution of Ex.B-10 and with regard to borrowing of money by defendant No. 15. Merely because they are related to defendant No. 15, their evidence cannot be rejected. It may be mentioned that all persons belonging to Chapalamadugu and Malempati families are closely related by reason of marriages. All the relations were actively involved in execution of Ex.B-10 agreement by late Annapurnamma. This is natural because wife of defendant No. 15 is sister of Annapurnamma. Another sister of them brought stamp papers. Scribe and attesotrs are also related. Presumably for the reason that defendant No. 15 having come to know that Annapurnamma is desirous of selling property, she called for nearest relatives to transaction. There is nothing abnormal in the transaction. Therefore Ex.B-10 must be held to have been proved. As already noticed supra, financial capacity of defendant No. 15 is not relevant issue nor on that ground, Ex.B-10 can be rejected because there is no allegation either in plaint or rejoinder of plaintiff or in written statement of defendants 2 and 3 that defendant No. 15 had no capacity to pay sale consideration on the date of agreement. By way of abundant caution, defendant No. 16 as D.W.6 spoke about method and manner of raising money by her husband and even that part of her deposition is doubt or improbable, the same does not make any difference. Furthermore, in paragraph 6 of plaint, an allegation is made that defendant No. 4 connived with his brothers, Satyanarayana and Surya Narayana, his cousin Narasimha Rao (defendant No. 9), Kilaru Sitaravamma and obtained thumb impressions of Annapurnamma immediately after her death on blank white papers with a view to make wrongful gain. If plaintiff is suggesting that these blank papers were used for fabricating the Will and agreement, Ex.B-10, she should fail for the simple reason that Ex.B-10 is executed on stamp paper worth Rs. 6/-. Be that as it is vendee or his legal heirs have proved agreement, Ex.B-10, in accordance with law by examining scribe and attestor, D.W.7 and D.W.8, who saw Ex.B-10 being executed, there is nothing on record to lead to a different conclusion.

31. Learned Counsel for the plaintiff, however, made following submissions for rejecting Ex.B-10. Annapurnamma is signatory and in the absence of any reason as to why she put her thumb impression under Ex.B-10, which is suspicious.

Ex.B-10 was produced by D.W.I instead of D.W.6 and, therefore, it is improbable. The contention that possession was delivered on the date of Ex.B-10 improbably the same as ordinarily possession is delivered on the date of sale deed. When the total consideration for Ex.B-10 is Rs. 42,000/-, defendant No. 15 would not have kept quiet without obtaining sale deed from Annapurnamma by paying a sale consideration of Rs. 40,000/-. Balance consideration of Rs. 2,6000/- which by any standard is small amount. There is no reason why Annapurnamma should sell item No. 1 of plaintiff-A schedule under Ex.B-10 and if really Ex.B-10 is genuine document, defendant No. 15 or his legal heirs would not have kept quiet without filing a suit for specific performance of agreement of sale.

32. Whether Ex.B-10 is improbable by being a sale in favour of a close relative, who is resident of a far-off place. Learned trial Judge came to the conclusion that Ex.B-10 is improbable because of reason why defendant No. 15, a resident of Machilipatnam, purchased property at Narasaraopet under Ex.B-10 is not forthcoming and that he failed to obtain registered sale deed, even after lapse of considerable time. In the considered opinion of this Court, reasons which weighed with learned trial Court would not probablise Ex.B-10. There is no dispute that Annapurnamma, Suryamba (wife of defendant No. 15) and Kiralu Sitaravamma are sisters of defendant No. 4 and all are children of Punnamma (D.W.5). Plaintiff also admits that as the yield from agricultural land was not profitable and also to get over land ceiling legislation, Annapurnamma started selling lands to convert them into cash. She was a sick lady with paralysis and, therefore, it is quite probable that she was selling the lands for intending purchasers. Exs.B-4 to B-7 would prove this. Annapurnamma selling land under Ex.B-10 is, therefore, neither abnormal nor improbable. Having come to know that his sister-in-law is selling land, if defendant No. 15 though resident of Machilipatnam approached her to purchase land, there is no surprise. He is not a stranger to the family and it might be possible that Annapurnamma herself requested her sister Suryamba to purchase land. It is also in the evidence of D.W.7, scribe of Ex.B-10, that defendant No. 15 wanted to settle at Kammavaripalem and, therefore, he purchased the land under Ex.B-10. There is nothing to suggest that D.W.7 was speaking lie. It is not uncommon among members of close families to purchase lands from their relatives or raise money either by selling or mortgaging property in their favour.

33. Plaintiff is resident of Vijayawada. A reading of Exs.B-2 and B-3 settlement deeds would show that by the time, Kondaiah married Annapurnamma, three daughters of Kondaiah through her first wife were married. From this, it becomes clear that plaintiff was ignorant of family affairs that were happening in Kammavaripalem. She could not have expected to have personal knowledge about these things. In her evidence as P.W.1, except denying suggestions made to her, she expressed her ignorance about family affairs. May be for this reason, she does not challenge Ex.B-10 in the original plaint, though she came forward with a bald denial in rejoinder. Defendants 2 and 3 in their written statement

never raised suspicion or challenge to Ex.B-10 though the principle that whichever is not denied is admitted need not be made applicable, D.W.I and D.W.6 proved Ex.B-10. Plaintiff or contesting defendants did not lead any rebuttal evidence. At the moment Ex.B-10 was proved by vendees, onus shifts to plaintiff to lead contra evidence and she cannot succeed raising all sorts of improbable theories to disbelieve Ex.B-10.

34. Ex.B-10 contains Left Thumb Impression (LTI) of Annapurnamma. Exs.B-5 to B-7 are sale deeds executed by Annapurnamma containing her LTI. In these documents, a mention is made to the effect that as Annapurnamma suffered paralysis of her right hand, she is not able to sign as she used to earlier. Ex.B-10 does not contain such an averment or statement. From this, a point is sought to be made by learned Counsel for plaintiff contending that in the absence of any such mention as to why executant is affixing her LTI, Ex.B-10 is invalid. The submission is devoid of any merit. The reasons are as follows. Annapurnamma suffered paralysis in March 1973. Till then she was signing her name in the documents executed by her as seen from Ex.B-4 sale deed dated 06-7-1971. Ex.B-5 dated 20-3-1974 Exs.B-6 and B-7 both dated 28-5-1974, contain her LTI and state that though earlier she was signing, as she was attacked paralysis she was putting her LTI. All these documents are written by professional document writers and probably they took abundant care to mention the reason for executant putting her LTI. Ex.B-10 admittedly is written by relative of Annapurnamma, who studied upto 5th standard and is an unlicensed irregular document writer. That is one reason why a mention was not made. Secondly vendor and vendee are closely related and transaction was based on more faith than anything else. Thirdly, as rightly pointed out by learned Counsel for defendants 16 to 18 by the time Ex.A-10 was executed in November 1976, it was known to everybody that Annapurnamma had paralysis and, therefore, she used to put her LTI. In all probability, therefore, D.W.7, scribe of Ex.B-10, did not mention reason for Annapurnamma putting her LTI. Mere absence of such statement, Ex.B-10 would not render invalid. D.W.6 also gave explanation as to why sale deed was not obtained immediately after agreement and there was no serious challenge to what she stated.

35. The case of defendants 16 to 18 that on the date of Ex.B-10 possession was handed over to defendant No. 15, who leased it out to defendants 5 and 6. Defendant No. 5 gave evidence as D.W.9 supporting case of defendant No. 16 (wife of defendant No. 15). According to D.W.9, he and defendant No. 6 jointly cultivated on lease for two years and paid lease amount to defendant No. 15. It is also in the evidence of D.W.6 that after expiry of two years lease period, land was leased out to Chandra Adinarayana for two years and thereafter land was cultivated by Chandra Satyam. There is absolutely no contra evidence let in by plaintiff or defendants 1 to 3. Exs.B-11 to B-17 are cist receipts on which reliance is placed by purchasers. Exs.B-12 to B-17 are subsequent to filing of suit and there are corrections in Ex.B-11. But still insofar as possession of land is concerned, it makes no difference because Ex.B-10 is dated 05-11-1976. Unless

and until land is cultivated, cist will not be paid. Therefore, there would not be any cist receipt in 1976. It can only be for the year 1977. Ex.B-11 is for 1977 which itself would show that defendant No. 15 was in possession of the land through his lessees. The suit was filed on 20-3-1978 as *informa pauperis*. Therefore even Exs.B-12 to B-17 which came into existence subsequently also assume importance. Plaintiff and defendants 1 to 3 admit that Annapurnamma was in possession of land through her servants till her death of 15-6-1978. Ex.B-11 coupled with evidence of D.W.6, D.W.7 and D.W.9 would show that it was only defendant No. 15 and after his death defendants 16 to 18 who are in possession of item No. 1 of plaintiff-A schedule property. The non-mentioning of particulars of Exs.B-11 to B-17 does not make any difference when the plaintiff does not choose to make any rebuttal evidence. In view of this, proof of Ex.B-10 coupled with fact that possession was handed over to defendant No. 15 which was leased out to D.W.9 and another, then to Chandra Adinarayana for two more years and thereafter to Chandra Satyam would show that Ex.B-10 is valid and binding on legal heirs of Annapurnamma.

36. Learned Counsel for plaintiff submits that when Ex.B-9 itself is surrounded by suspicious circumstances, Ex.B-10 must be rejected. This Court cannot countenance the submission. Ex.B-10 is prior in point of time to Ex.B-9 Will. Ex.B-10 is an independent document and, therefore, even Ex.B-9 Will is not proved and not binding on rival parties, Ex.B-10 can be sustained on its own strength. The contentions of plaintiff that Ex.B-9 is forged, fabricated, surrounded by suspicious circumstances and that the document itself is unnatural are all the grounds, which cannot be pressed to invalidate Ex.B-10 agreement. As concluded *supra*, Ex.B-10 has been proved by defendants 4 and 16 to 18 by cogent and convincing evidence. Therefore Ex.B-10 is enforceable as independent document against all those persons who succeed to the property of Annapurnamma.

37. In conclusion, this Court holds that Ex.B-9 Will dated 15-6-1978 allegedly executed by late Annapurnamma is not true, valid and it is not the last testament of Annapurnamma. It is not binding on plaintiff or defendants 1 to 3. This Court also holds that Ex.B-10 agreement of sale dt. 05-11-1976 executed by Annapurnamma in favour of defendant No. 15 (predecessors of defendants 16 to 18) is valid and binding on legal heirs of Annapurnamma, namely, plaintiff and defendants 1 to 3. They are bound by the same and are under obligation to execute sale deed in favour of defendants 16 to 18. In the suit for partition filed by plaintiff, item No. 1 of plaintiff-A schedule property, which is subject matter of Ex.B-10 would not be available for partition.

38. Accordingly, Appeal Suit No. 1887 of 1988 filed by defendants 16, 17 and 18 in the suit is allowed with costs. Appeal Suit No. 1433 of 1989 filed by defendants 4, 13 and 14 (legal heirs of defendant No. 14 were impleaded) is dismissed with costs. The impugned judgment and decree shall stand modified accordingly insofar as item No. 1 of plaintiff-A schedule is concerned.