
(2011) 07 MAD CK 0162
In the Madras High Court
Case No : O.S.A. No"s. 110 of 2010

N. Govindarajan	Vs	APPELLANT
N. Leelavathy, S. Ramadevi, V. Maheswari and S. Vasanthi		RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Evidence Act, 1872 — Section 68
Succession Act, 1925 — Section 63

Citation : (2011) 5 CTC 287 : (2011) 3 LW 774

Hon'ble Judges : V. Periya Karuppiyah, J;R. Banumathi, J

Bench : Division Bench

Advocate : R. Madanagopaal, for the Appellant; N. Kannan, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—These appeals arise out of the common judgment and decree in T.O.S. No. 43 of 2001 and Tr. C.S. No. 899 of 2003

dated 07.10.2009 whereby the learned single Judge dismissed the suit T.O.S. No. 43 of 2001 filed by the Appellant-Plaintiff declining to grant

probate in respect of the suit property described in the Will dated 24.05.1995 executed by deceased N. Krishnamurthy appointing the Appellant

as executor of the Will. By the same Judgment, learned Judge decreed the suit Tr. C.S. No. 899 of 2003 granting permanent injunction against the

Appellant from alienating/encumbering the suit property. Plaintiff in T.O.S. No. 43 of 2001 and Defendant in Tr. C.S. No. 899 of 2003 is the

Appellant herein. For convenience, the parties are referred as per their array in T.O.S. No. 43 of 2001.

2. 1st Defendant-1st Respondent is the wife of deceased N. Krishnamurthy. Plaintiff-Appellant is the son and Defendants 2 to 4 and one

Vijayalakshmi are the daughters of deceased N. Krishnamurthy. The genealogy of deceased N. Krishnamurthy is as under:

3. The property bearing Door No. 22/27, Krishna Rao street, T. Nagar, Chennai measuring an extent of 2 grounds and 1900 sq. ft. was

purchased by deceased N. Krishnamurthy and his father N.S. Naidu under sale deed dated 05.12.1975. N.S. Naidu bequeathed his undivided half

share infavour of Plaintiff under Will dated 01.02.1982 and the said Will was probated by the Plaintiff's father in O.P. No. 200 of 1986 dated

23.4.1987.

4. Case of Plaintiff-Appellant is that his father deceased N. Krishnamurthy had executed his last Will and testament (Ex.P1) on 24.5.1995 at

Chennai bequeathing his half share in the property bearing Door No. 22/27, Krishna Rao street, T. Nagar, Chennai-17 infavour of Plaintiff.

Plaintiff was appointed as executor under the Will dated 24.05.1995. Plaintiff being the executor of Ex.P1-Will has filed O.P. No. 583 of 2001 for

grant of probate. Defendants 1 and 2 filed Caveat and hence O.P. No. 583 of 2001 was converted as T.O.S. No. 43 of 2001.

5. Case of Plaintiff is that as per the Will dated 24.5.1995 executed by deceased N. Krishnamurthy, Plaintiff is entitled to entire half share of N.

Krishnamurthy. Defendants-Respondents have no right or title nor can lay any claim to 1/6th share each in the half undivided share of the suit

property. Further case of Plaintiff-Appellant is that ground floor portion was let out to M/s. Jainsons on a monthly rent of Rs. 15,000/- during the

life time of his father and 1st Defendant-1st Respondent (mother of Plaintiff) was allowed to collect a sum of Rs. 8,000/- per month from the tenant

to meet out the family expenses during the life of deceased N. Krishnamurthy and the same has been continued after the life time of deceased N.

Krishnamurthy. Plaintiff was collecting Rs. 7000/- from the tenant. It is averred that 1st Defendant-Leelavathy who was living with the Plaintiff

along with her first daughter (2nd Defendant-Ramadevi) has diverted the entire sum so collected to other persons over looking the interest of the

family consisting of herself, her son and the unmarried daughter. From the rental income of Rs. 7000/-, Plaintiff was paying the Corporation Tax,

Water Tax, Urban Land Tax and make provision for water to the tenant and had to maintain his mother (1st Defendant) and his last sister, as a

result of which, Plaintiff incurred huge debts.

6. Resisting T.O.S. No. 43 of 2001, Defendants 1,2 and 4 have filed written statement contending that deceased N. Krishnamurthy never

executed any Will infavour of Plaintiff bequeathing his half share of the suit property and the alleged Will dated 24.5.1995 is a forged one. Case of

Respondents is that in order to deprive the share to the other legal heirs, Plaintiff has initiated probate proceedings after a lapse of 5 years. Case of

Defendants is that since the suit property is the self acquired property of deceased N. Krishnamurthy, Defendants and Appellant being the legal

heirs, they are entitled to 1/6th share each in respect of half share of the suit property. According to Defendants, the arrangement for collection of

rent from the tenant was done for the survival of the 1st Defendant after she lost her husband. Further case of Defendants is that after the death of

her husband, she continued to live in the suit property by collecting the rent from the tenant. According to Defendants, Plaintiff approached the

tenant and demanded the entire rental income to be paid to him stating that the whole property belonged to him.

7. Alleging that Plaintiff is trying to alienate the undivided half share of the suit property to third parties, Defendants 1 and 2 have filed O.S. No.

1523 of 2001 on the file of XIV Assistant Judge, City Civil Court, Chennai for permanent injunction restraining the Plaintiff-Appellant from

alienating or encumbering the suit property without the knowledge and written consent of the Defendants 1 and 2. Later, the said suit was

transferred to the file of this Court and re-numbered as Transferred C.S. No. 899 of 2003 and tried along with Testamentary suit.

8. On the above pleadings, the following Issues were framed by the learned Judge in both the suits:

T.O.S. No. 43 of 2001:

- 1) Whether the alleged Will dated 24.05.1995 is true and valid?
- 2) Whether the Will was prepared subsequent to the death of N. Krishnamoorthy?
- 3) Whether the Plaintiff is entitled to probate as sought for?
- 4) To what relief the Plaintiff is entitled?

Tr. C.S. No. 899 of 2003:

- 1) Whether the Plaintiffs are entitled to injunction as prayed for in the plaint?

2) To what relief the Plaintiffs are entitled to?

9. Learned Judge has taken up both the suits together and common evidence was recorded in T.O.S. No. 43 of 2001. Plaintiff-N. Govindarajan

examined himself as PW1.K. Baskar (PW2), attest or of the Will filed proof-affidavit and was cross examined. Exs.P1 and P2 were marked.

Proof affidavit of 1st Defendant-Leelavathy (DW1) filed and cross examined. Exs.D1 to D9 were marked.

10. Upon consideration of oral and documentary evidence, learned Judge expressed doubts about the trustworthiness of attest or PW2-Baskar.

Learned Judge held that attesters to Ex.P1-Will, PW2-Baskar and Jalal are classmates and hostel mates and also friends of PW1-Govindarajan.

Learned Judge held that Ex.P1-Will is surrounded by suspicious circumstances:

(a) Tampering of seal in Ex.P1-Will; (b) Delay in filing the Probate; (c) The recitals in sale deeds (Ex.D1 and D2); (d) Incorrect recital in Ex.P5-

Will; (e) Unnatural disposition; (f) The place where Ex.P1-Will has been executed; (g) The attesters are strangers, who are

friends/classmates/hostel mates of PW1/propounder/beneficiary of the Will; (h) Attestation. Finding that suspicious circumstances are not dispelled

and declining to grant probate, learned Judge dismissed T.O.S. No. 43 of 2001 and decreed Tr. C.S. No. 899 of 2003.

11. Challenging the impugned Judgment, Mr. R. Madhanagopaal, learned Counsel for Appellant-Plaintiff contended that the learned Judge failed to

note that Appellant-Plaintiff has complied with Section 63 of Indian Succession Act and Section 68 of Indian Evidence Act by examining the attest

or PW2-Baskar. It was further submitted that the learned Judge erred in saying that the attesters are strangers, friends and classmates which

creates suspicious. It was urged that the observation of the learned Judge regarding execution of Ex.P1-Will and the suspicious circumstances are

not based on pleadings, evidence and attributing circumstances are in the nature of surmises. Learned Counsel for Appellant-Plaintiff assailed the

findings of learned Judge on each and every suspicious circumstance.

12. Placing reliance upon 81 LW 80 (Andal Ammal, In re) and 2001 (2) CTC 744 (S. Thirunavukkarasu v. B. Kandasuamy Reddy and 2 Ors.),

Mr. N. Kannan, learned Counsel for Respondents-Defendants 1 and 2 contended that execution of Ex.P1-Will has not been proved in

accordance with the well settled principles. Taking us through the findings of learned Judge, learned Counsel for Respondents submitted that as

held by the learned Judge that many suspicious circumstances surrounding the Will have not been explained which militate against the genuineness

of Ex.P1-Will. Drawing our attention to tampering and incorrect recitals in Ex.P1-Will, learned Counsel for Respondents 1 and 2 reiterated the

findings of the learned Judge.

13. Upon consideration of rival submissions and the impugned Judgment, the point falling for consideration is whether the learned Judge was right

in finding that Ex.P1-Will is surrounded by suspicious circumstances and whether the learned judge was right in refusing to grant probate? Another

point falling for our consideration is whether learned Judge was right in decreeing the suit for permanent injunction for the entire extent of property?

14. Section 63 of Indian Succession Act postulates the mode and manner in which proof and execution of a document, required by law is to be

attested. As per the provisions of Section 63 of Indian Succession Act, for the due execution of a Will -

(1) the testator should sign or affix his mark to the Will;

(2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a

Will;

(3) the Will should be attested by two or more witnesses, and

(4) each of the said witnesses must have seen the testator signing or affixing his mark to the Will and each of them should sign the Will in the

presence of the testator.

15. Section 68 of Indian Evidence Act lays down the mode and manner in which the execution of an unprivileged Will is to be proved. In

unequivocal terms, Section 68 states that the execution of the Will must be proved at least by one attesting witness.

16. The law is well settled that the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the

special requirement prescribed in the case of a Will by Section 63 of Indian Succession Act. The law requires that the proof of execution of a Will

has to be attested at least by two witnesses. At least one attesting witness has to be examined to prove the execution and attestation of the Will.

Further, it is to be proved that the executant's had signed and/or given his thumb impression in the presence of at least two attesting witnesses and

the attesting witnesses had put their signatures in the presence of executant's. (See (2007) 5 MLJ 159 (SC), *Benga Behera and Anr. v. Braja*

Kishore Nanda and Ors.; Madhukar D. Shende Vs. Tarabai Aba Shedage, ; Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, ; Bhagat Ram

and *Another Vs. Suresh and Others, .*

17. The burden of proof that the Will has been validly executed and is a genuine document, is on the propounder. The propounder is also required

to prove that the testator has signed the Will and that he had put his signature out of his own free Will having a sound disposition of mind and

understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have

been discharged. Court granting Letters of Administration/Probate must satisfy itself not only about the genuineness of the Will, but also satisfy

itself that it is not fraught with any suspicious circumstance. But the onus would be on the applicant to remove the suspicion by leading sufficient

and cogent evidence if there exists any. (See *Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others, ; Madhukar D. Shende Vs.*

Tarabai Aba Shedage, and Sridevi and Others Vs. Jayaraja Shetty and Others, .

18. Appellant-Plaintiff being the propounder of Ex.P1-Will has to prove the due execution of Ex.P1-Will. To prove the attestation of Ex.P1-Will,

Appellant-Plaintiff examined PW2-Baskar. Since Appellant-Plaintiff advanced arguments assailing the findings of the learned Judge that Ex.P1-Will

not proved to be valid, it is necessary for us to analyse the evidence at length adduced by the Appellant-Plaintiff and also various suspicious

circumstances pointed out by the learned Judge.

19. In his chief examination/proof affidavit, PW2 has stated that he signed in Ex.P1-Will after the testator N. Krishnamurthy signed it in his

presence and after PW2 signed as first witness, another witness by name Jalal who is also friend of Pws.1 and 2 signed in Ex.P1-Will as witness

and that one Advocate has signed in Ex.P1-Will. PW2 further stated that he saw N. Krishnamurthy signing his name in Ex.P1-Will and only

thereafter, PW2 and Jalal and Advocate have signed. PW2 has also stated that N. Krishnamurthy asked him to sign in the Will and after his

signature Jalal also signed as a witness. PW2 is admittedly friend of Plaintiff and both of them studied together at Crescent School, Vandalur and

also stayed together in the hostel. PW2 is stranger to testator; but friend/classmate of PW1 and his evidence is to be viewed with caution.

20. In his chief examination, PW2 has stated about his signing in Ex.P1-Will. In the cross-examination when being questioned, PW2 was not in a

position to say as to how many times N. Krishnamurthy signed in the document and stated that he had not noticed the same. PW2 would only state

that when himself and Jalal went to N. Krishnamurthy's house, PW2 signed in only one page which is the signature found in the second page of

Ex.P1-Will. PW2 is not in a position to state whether N. Krishnamurthy signed in the first page of Ex.P1-Will. As discussed infra, name

CHENNAI"" in the seal of Advocate & Notary Public found in the first page of Ex.P1-Will has been erased. PW2 has not spoken anything about

the erasing of name ""CHENNAI"" in the first page of Ex.P1-Will.

21. The law is well settled that the conscience of the Court must be satisfied that the Will in question was not only executed and attested in the

manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the

executant's who had voluntarily executed the same after knowing and understanding the contents of the Will. Execution of Will is a solemn act of

the executant's who must own up the recitals in the instrument and there must be clear evidence that he puts his signature in a document after

knowing fully its contents. The executant's of a document must, after fully understanding the contents and the tenor of the document put his

signature or affix his thumb impression. In other words, the execution of the document does not mean merely signing, but signing by way of assent

to the terms of the contract of alienation embodied in the document.

22. Holding that the propounder has to show that the testator at the relevant time was in a sound and disposing state of mind and that he

understood the nature and effect of the dispositions, in J. Mathew (died) and Others Vs. Leela Joseph, , the Division Bench of this Court (one of

us was a member ? RBIJ) held as under:

13. The mere fact that signature of a person is proved on a document does not necessarily mean that the person who has signed the document has

done so after understanding the contents of the document. In our considered opinion, the expression ""execution"" does not merely means the

signature, but means that the Executant or the person who puts the signature has done so after understanding the contents of the document. In

other words, it has to be proved said that the hand which had signed the document was with the mind.

23. Propounder of the Will has to adduce such evidence that testator had put his signature after understanding the contents of the document. No

convincing evidence is forthcoming as to whether testator N. Krishnamurthy has understood the recitals in Ex.P1-Will. That apart, absolutely there

is no evidence as to who drafted Ex.P1-Will and who dictated the recitals and who typed it.

24. The attestation of the Will is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the

executant's. The attesting witness should put his signature on the Will animo attested. In the present case, no such evidence of animo attested is

forthcoming. In his cross examination, PW2 has stated that "" he did not know that he was signing in the Will at all and only through Plaintiff, he

came to know that he has signed in the Will"". We may usefully refer to the evidence of PW2 which reads as under:

...As I did not know that Ex.P1 was a Will so I did not inform to the Plaintiff. Late Krishnamoorthy also did not inform about the contents of Ex.P1

and he did not say it was a Will....

As pointed out earlier, in his capacity as attest or, PW2 has spoken to about seeing the testator signing only in the second page of Ex.P1-Will. He

has not stated that he saw the testator signing in all pages of Ex.P1-Will. Infirm evidence of PW2 coupled with the fact that he is friend of PW1,

we are of the view that evidence of PW2 is not sufficient to satisfy the requirement of the provisions of Section 63(c) of Indian Succession Act.

25. Placing reliance upon Yumnam Ongbi Tampha and Ibemma Devi Vs. Yumnam Joykumar Singh and Others, , learned Counsel for Appellant

contended that to prove the Will, it is not necessary that two attesting witnesses should be examined and the learned Judge erred in doubting the

trustworthiness of PW2 on peculiar reason that PW2 was classmate of Appellant-Plaintiff and that they studied in the same school. u/s 68 of Indian

Evidence Act one of the requirement of due proof of a Will is that the propounder of the Will has to examine at least one attesting witness. No

doubt, it is not necessary that both the witnesses are to be examined. But as pointed out by the learned Judge, both PW2-Baskar and another

attesting witness Jalal are friends of Plaintiff/Propounder of Ex.P1-Will. At the time when Ex.P1-Will was allegedly executed on 24.05.1995, PW2

was only aged 24 years and the testator was aged 55 years. Testator was doing film distribution business and also maintaining the Lodges and late

N. Krishnamurthy was having friends of his own. Execution of Will being a solemn occasion, if at all deceased N. Krishnamurthy intended to

execute the Will, he would have called his friends to attest the Will. In his evidence PW2 has stated that he attended the marriage of one of the

sister of Plaintiff viz., Vijayalakshmi solemnized within one month after signing the Will. Curiously, PW2 did not inform the Plaintiff about the Will

executed by his father nor informed him about his attestation in the Will. When Plaintiff and PW2 are close friends, it is quite improbable that he

would have remained quite without informing the Plaintiff about the execution of Will. As held by the learned Judge, it is illogical to accept the

contention of Plaintiff that late N. Krishnamurthy bequeathed the property to his only son and that the attesters are son's friends. Learned Judge

rightly expressed doubts about trustworthiness of PW2 and due execution of Ex.P1-Will.

26. Learned Counsel for Respondents 1 and 2 contended that absolutely no evidence is forthcoming as to who drafted Ex.P1-Will and who typed

it. Learned Counsel would further contend that N. Krishnamurthy being a film distributor and who was also running Lodges, if really intended to

execute the Will would have called his friends to attest the Will. In this regard, learned Counsel for Respondents 1 and 2 placed reliance upon Smt.

Jaswant Kaur Vs. Smt. Amrit Kaur and Others, wherein the Supreme Court held as under:

No evidence has been led as to who drafted the will, it being in legal jargon and who typed it. Neither is the place of execution mentioned. The will

also lacks in description of the extensive properties allegedly bequeathed to the Defendant. The inclusion of strangers as attesting witnesses is

intriguing. The utter improbability of the testator accosting two strangers for getting his will attested and the fundamental contradictions in their

evidence render it impossible to hold that they attested the will at the instance of the testator as alleged. A man of importance that the testator was, he could not ever have left the validity of his will to depend on the unpredictable attitude of unknown elements. Non-disclosure of the existence of the will by the attesting witnesses confirms the suspicion. Again the non examination of the executors of the will raises further doubt. Since executors of a will are usually consulted, ignorance of the executors as to the existence of the will further makes it doubtful. Moreover the will is unnatural and unfair in ignoring the testator's other descendants then existing. No evidence has been led to support the reason for exclusion of the Plaintiff wife from any benefit. It seems difficult to believe that a person in the position of the testator who was possessed of a large estate, would disinherit so many of his near relatives including his wife and shower his bounty on the grandson, to the exclusion of everyone else. These circumstances are sufficient to discard the will. The Defendant failed to discharge the heavy onus which lay on him of explaining the suspicious circumstances surrounding the execution of the will and of establishing that the document which he propounded was the last will and testament of his grandfather.

27. The ratio of the above decision squarely applies to the case on hand. Even though, Thiru. V. Subramanian, Advocate & Notary Public is said

to have affixed his seal, absolutely, there is no evidence as to who drafted the Will and who typed it. As rightly contended by the learned Counsel

for Respondents 1 and 2, late N. Krishnamurthy being a man of knowledge would have called his family members and friends to execute the Will.

It is not as if the execution of Will and probate proceedings are strange to N. Krishnamurthy. Earlier, for obtaining probate of the Will dated

01.02.1981 executed by N.S. Naidu bequeathing 50% of the suit property infavour of Plaintiff, the Plaintiff's father N. Krishnamurthy filed O.P.

No. 200 of 1986 and obtained probate on 23.04.1987. While so, it is quite unbelievable that N. Krishnamurthy would have chosen to execute

Ex.P1-Will secretly by calling friends of his son as attest Ors.

28. As regards due execution of the Will by the testator, the conscience of the Court has to be satisfied by the propounder of the Will by adducing

evidence so as to dispel any suspicion or unnatural circumstances attaching to

the Will. Law is well settled that if there are suspicious circumstances surrounding the Will, it is the duty of the person who propounds the Will to dispel such suspicious circumstance. In *H. Venkatachala Iyengar Vs.*

B.N. Thimmajamma and Others, , the Supreme Court has held that where the propounder was unable to dispel the suspicious circumstances, which have surrounded the question of valid execution of Attestation of the Will, no Letters of Administration in favour of the propounder could be granted.

29. Elaborating as to what are the suspicious circumstances, in *Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others*, , the Supreme Court has held as under:

33. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will.

(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.

(See also *Management Committee T.K. Ghosh's Academy Vs. T.C. Palit and Others*, ; *B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and*

Others, .

30. In the case on hand, circumstances are too numerous to mention which throw a cloud of suspicion attached to Ex.P1-Will. Learned Judge

enumerated various suspicious circumstances and held that those suspicious circumstances were not dispelled by the propounder of the

Will/Plaintiff. Much arguments were advanced assailing the findings of the learned Judge as to the suspicious circumstances. Learned Counsel for

Plaintiff contended that there exists a distinction where suspicions are well founded and the cases where they are merely suspicions and the alleged

suspicious circumstances enumerated by the learned Judge are neither based on pleadings and evidence nor well founded. We may now refer to

the suspicious circumstances pointed out by the learned Judge.

31. DELAY IN FILING PROBATE:

Ex.P1-Will was allegedly executed on 24.05.1995.N. Krishnamurthy died on 28.02.1997. But O.P. No. 583 of 2001 was filed on 01.03.2001.

In O.P. No. 583 of 2001, Plaintiff made an attempt to explain the delay. In Para-10, it has been stated as under:

10. Though the Will was executed on 24.5.1995 there was no necessity for the Petitioner before to file probate proceedings and in view of the necessity now, this petition is filed. So, the delay in filing probate proceedings and it has to be condoned.

Per contra, in his oral evidence/cross-examination PW1 has stated that he came to know about the execution of Will (Ex.P1) by his father only in

2001 and thereafter the probate proceedings was initiated.

32. Placing reliance upon Ammu Balachandran Vs. Mrs. O.T. Joseph (died) and others, , learned Counsel for Plaintiff contended that delay cannot

be treated as suspicious circumstance for denying probate. It was further submitted that it is well settled that there is no limitation for the probate of

the Will and while so, the learned Judge erred in attributing malafide on the ground that probate was filed in the year 2001. From the time of

execution of Ex.P1-Will (1995) and from the death of N. Krishnamurthy (1997), Ex.P1-Will did not see the light of the day. It is quite

ununderstandable why the bequeathed valuable property to the Plaintiff should have remained secret.

33. Contending that suspicious circumstance of delay in filing of probate has not been dispelled, the learned Counsel for Respondents 1 and 2

placed reliance upon Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, . In the said case existence of Will was not made known for over 2=

years after the testator's death. Observing that it is ununderstandable why the Will should have remained a closely guarded secret, in Para-14, the

Supreme Court held as under:

14. Circumstances are too numerous to mention which throw a cloud of suspicion on the making of the will by Gobinder Singh. The will is alleged

to have been made on November 26, 1945 but it did not see the light of the day till August 20, 1957. Being an ambulatory document, it may be

granted that there may be no occasion for anyone to know of its existence until the death of the testator on December 15, 1954. But it is

ununderstandable that a document by which property worth lakhs of rupees was

disposed of should have remained a closely guarded secret from the whole world of intimate friends and relatives, nay, from the sole legatee himself, for over 2= years after the testator's death. The testator had left behind him a large property and along with it a large amount of litigation which makes it impossible to believe that upon his death in December 1954, no one bothered to go through his papers which would reflect the state and extent of his property. The explanation of the Defendant that he hit upon the will by chance while going through some papers of his grandfather is therefore patently lame and unacceptable.

34. As pointed out by the learned Judge, 50% of the property belonged to N.S. Naidu ? grandfather of Plaintiff was already bequeathed to the Plaintiff. Plaintiff's father probated the said Will dated 01.02.1981 in O.P. No. 200 of 1986 on 23.04.1987. Therefore, it is not as if the probate proceedings were unknown to the Plaintiff. No convincing reason is forthcoming for the delay in filing the probate. Even though, delay itself cannot be treated as a suspicious circumstance, coupled with the other circumstances in this case, the delay in filing the probate is evidently a suspicious circumstance and the learned Judge rightly held that this suspicious circumstance has not been dispelled by the Plaintiff.

35. TAMPERING OF SEAL IN EX.P1-WILL:

In Page No. 1 of Ex.P1-Will where seal of Thiru. V. Subramanian, Advocate & Notary Public is found which is mentioned as follows:

V. SUBRAMANIAN

ADVOCATE & NOTARY PUBLIC

76, ADDL. LAW CHAMBERS

HIGH COURT 600 104

CHAMBERS

MADRAS.

36. By careful perusal of Ex.P1-Will, it is seen that there was tampering in the Will. In the seal of the Advocate & Notary Public ""CHENNAI"" has been erased and in that place ""CHAMBERS MADRAS"" has been substituted. Erasure of the word ""CHENNAI"" and substitution of the word CHAMBERS MADRAS"" could be seen by the naked eye. In the second page of Ex.P1-Will, the bottom portion which would have contained

the city name ""CHENNAI"" appears to have been carefully cut off. Traces of cutting the bottom portion of second page of Ex.P1-Will is visibly

seen in the original of Ex.P1-Will. Learned Judge held that tampering generates suspicious circumstance that Ex.P1-Will must have been created

after the death of deceased N. Krishnamurthy.

37. Placing reliance upon Madhukar D. Shende Vs. Tarabai Aba Shedage, , learned Counsel for Plaintiff contended that the judicial thinking

should not be affected by unfounded suspicious circumstances which are not well founded. It was further contended that the finding of the learned

Judge as to the alleged tampering is purely surmises of the learned Judge and not well founded.

38. The reason for tampering of seal of Advocate & Notary Public and cutting the bottom portion of the second page of Ex.P1-Will is not far to

seek. Name of the city ""MADRAS"" was changed as ""CHENNAI"" by Government of Tamil Nadu only in the year 1996. Admittedly, during 1995

the city was called as ""MADRAS"" and not as ""CHENNAI"". Since name of the city was changed as ""CHENNAI"" in 1996, the seal of Thiru. V.

Subramanian, Advocate & Notary Public evidently would have contained the name of city as ""CHENNAI"". Plaintiff has not satisfactorily explained

tampering of seal. As pointed out earlier, PW2 has not spoken anything about tampering of seal in Ex.P1-Will. Tampering of seal in the first page

and cutting of bottom portion of second page of Ex.P1-Will is a suspicious circumstance as to genuineness of the Will which has not been dispelled

by convincing evidence.

39. RECITALS IN EX.D1 AND D2-SALE DEEDS:

At the time of death of N. Krishnamurthy, he was possessing the suit property at Chennai and also property at Vijayawada. After his death, the

property at Vijayawada has been alienated by his legal heirs viz., (1) Leelavathi; (2) Nagam Shetty Govindaraju; (3) S. Ramadevi, W/o. Subbaiah;

(4) V. Maheswari, W/o.N. Vijayakumar; (5) R. Vijayalakshmi, W/o. W.V. Rajarajan; (6) S. Vasanthi, W/o. Sree Pathi under sale deed (Ex.D1)

dated 10.12.1997. The said legal heirs have also sold another item of property in Vijayawada under Ex.D2-sale deed dated 10.12.1997. Both in

Exs.D1 and D2-sale deeds, it is clearly stated that Nagam Shetty Krishnamoorthy died intestate without leaving any Will or making any

arrangement for his properties as is seen from the following recitals:

...The above said Nagam Shetty Krishnamoorthy died intestate without leaving any Will or making any arrangement for his properties. Thus, all of his properties vested on us, as his legal heirs including the 139.75 square feet of land and thus we are absolutely entitled for the entire properties on him. Therefore, we have acquired the said property on 28.2.1997 under Hindu Succession Act and have possession and enjoyment of the same till date....

40. Recitals in both Exs.D1 and D2-sale deeds specifically state that Nagam Shetty Krishnamoorthy died intestate without leaving any Will.

Plaintiff being one of the vendor in Exs.D1 and D2-sale deeds is stopped from denying the contents. Learned Counsel for Plaintiff contended that

Plaintiff knows to read and write only Tamil and he also studied Arabic and Plaintiff knows only spoken Telugu. It was further submitted that

Plaintiff does not know to read and write Telugu and therefore, the recitals in Exs.D1 and D2-sale deeds cannot militate against the Plaintiff. The

above contention does not merit acceptance. Had there been any Will at the time of execution of Exs.D1 and D2-sale deeds, Plaintiff would have

definitely informed about testator Nagam Shetty Krishnamoorthy dying testate and that only in respect of Vijayawada properties, Nagam Shetty

Krishnamoorthy died intestate. The recitals in Exs.D1 and D2-sale deeds militate against the Plaintiff and Plaintiff is stopped from denying the

recitals in Exs.D1 and D2-sale deeds. As rightly held by the learned Judge this suspicious circumstance which has not been dispelled by the

Plaintiff.

41. INCORRECT RECITALS IN EX.P1-WILL:

Ex.P1-Will is also replete with incorrect statement. In Ex.P1-Will, the testator has stated as under:

I am married to my wife Mrs. LEELAVATHI and through our wedlock we got four daughters and one son namely (1) S. Ramadevi, (2)V.

Maheswari, (3) R. Viajayalakshmi, (4) N. Vasanthi and (5) N. Govindarajan.

42. At the time of alleged execution of Ex.P1-Will (24.5.1995), marriage of ""VIJAYALAKSHMI"" (3rd daughter) has not been performed and

therefore, on 24.5.1995, name of ""VIJAYALAKSHMI"" should have been only ""N.VIJAYALAKSHMI"". But in Ex.P1-Will name of

VIJAYALAKSHMI"" has been stated as ""R.VIJAYALAKSHMI"". ""R"" indicates the initial of her husband Rajarajan. Marriage of

VIJAYALAKSHMI"" was solemnized on 16.6.1995 and only after the marriage ""VIJAYALAKSHMI"" would have put initial of her husband. In

the Will allegedly executed on 24.5.1995, name of ""VIJAYALAKSHMI"" has been stated as ""R.VIJAYALAKSHMI"" which throws serious

doubts about the genuineness of Ex.P1-Will.

43. Learned Counsel for Appellant contended that betrothal of ""VIJAYALAKSHMI"" with Rajarajan was held even in March 1995 and therefore,

there was nothing unusual for the testator to put the name of ""VIJAYALAKSHMI"" with the initial of the proposed bridegroom. The above

contention cannot be sustained. In Ex.D3-marriage invitation, name of ""VIJAYALAKSHMI"" has been stated only as ""VIJAYALAKSHMI"".

Ex.D4 is the marriage certificate of ""VIJAYALAKSHMI"" registered on 18.11.1998. In Ex.D4, name of bride is stated as

N.VIJAYALAKSHMI"". Even on 18.11.1998, name of ""VIJAYALAKSHMI"" has been stated as ""N.VIJAYALAKSHMI"". It is not possible to

accept the contention that even before performance of marriage, the testator would have chosen to mention the name of his daughter as

R.VIJAYALAKSHMI"". Placing reliance upon Kishan Singh Ahluwalia Vs. Sheela Saxena and Others, and A. Chandrabati Vs. Laxmi Dei, , the

learned Judge held that inaccurate recitals contained in Ex.P1-Will is a suspicious circumstance. Mentioning the name of ""VIJAYALAKSHMI"" as

R.VIJAYALAKSHMI"" is a pointer of fabrication of the Will subsequently.

44. UNNATURAL DISPOSITION:

At the time of alleged execution of Ex.P1-Will, two daughters were unmarried. For one daughter viz., ""VIJAYALAKSHMI"" betrothal has been

performed and marriage date has been fixed on 16.6.1995. Wife of testator N. Leelavathy was also alive. While so, in Ex.P1-Will testator has not

made any provision for his daughters. As pointed out by the learned Judge, Plaintiff was already owner of 50% of the suit property by virtue of

Will dated 01.02.1981 executed by his grandfather. Unnatural disposition excluding the wife and daughters is yet another suspicious circumstance.

45. Placing reliance upon Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and Others, , learned Counsel for Appellant-Plaintiff

contended that mere fact that other natural heirs were debarred cannot be taken as suspicious circumstance. As held by the learned Judge, Plaintiff

was already owner of 50% of the property by virtue of Will dated 01.02.1981 executed by his grandfather N.S. Naidu. Placing reliance upon

Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, ; Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 and other decisions, learned Judge

held that exclusion of wife and daughters as to the remaining 50% is unnatural disposition which suspicious circumstance has not been dispelled by

the Plaintiff. We are of the view that ignoring the testator's wife and daughters in Ex.P1-Will is unnatural and unfair raising doubts about the

genuineness of the Will.

46. PLACE OF EXECUTION OF EX.P1-WILL:

In his evidence, PW2 has stated that place of execution of Ex.P1-Will is in the room at ground floor. Learned Counsel for Respondents 1 and 2

contended that marriage of ""VIJAYALAKSHMI"" was to be solemnized within 20 days on 16.6.1995 and the family must have been busy in

making arrangements of the marriage of ""VIJAYALAKSHMI"" and when there were elderly people in the family, it would have been improbable

for the testator to go to the room at ground floor and execute the Will without calling the elderly people in the house creates suspicion which was

not dispelled by the Plaintiff. Pointing out that deceased testator was a film distributor by profession and was maintaining Lodges, learned Judge

was right in holding that there was no reason for writing the Will secretly without the knowledge of his wife and others.

47. Placing reliance upon Adivokka and Others Vs. Hanamavva Kom Venkatesh "D" by LR. and Another, , learned Counsel for Appellant

contended that existence of suspicious circumstances alone may not be sufficient and the suspicion should be well founded. It was further

contended that the suspicious circumstances pointed out by the learned Judge are not based on pleadings and evidence and the learned Judge

erred in finding that the suspicious circumstances were not dispelled. The above contention does not merit acceptance. Suspicious circumstances

are so glaring and obvious throwing serious doubts about the genuineness of Ex.P1-Will. On finding that the suspicious circumstances are not

dispelled by the Plaintiff, the learned Judge rightly refused to grant the probate.

As such we do not find any error warranting interference with the findings of the learned Judge declining to grant probate.

48.O.S.A. No. 111 of 2010 (Tr. C.S. No. 899 of 2003):

Alleging that Plaintiff is trying to alienate undivided half share of suit property to third parties, Respondents 1 and 2 who are wife and daughter of

deceased N. Krishnamurthy have filed Tr. C.S. No. 899 of 2003 against the Appellant-Plaintiff for permanent injunction. According to

Respondents 1 and 2, since deceased N. Krishnamurthy died intestate leaving behind Respondents 1 to 4, Appellant-Govindarajan and one

Vijayalakshmi as his heirs, all of them are entitled to get 1/6th share each in 50% of the suit property. There is no dispute that ground floor of suit

property was let out to M/s. Jainsons for rent and Appellant and 1st Respondent were appropriating the rent.

49. Learned Counsel for Respondents 1 and 2 contended that in order to deprive the rental income which the 1st Respondent collecting hitherto

from the tenant-M/s. Jainsons, Appellant approached the tenant and demanded the entire rental to be paid in his favour stating that the whole

property belonged to him and therefore, Defendants 1 and 2 have filed Tr. C.S. No. 899 of 2003 for permanent injunction restraining the Plaintiff

from alienating/encumbering the suit property by way of lease, mortgage of the suit property without the knowledge and written consent of the

Defendants.

50. The said suit (Tr. C.S. No. 899 of 2003) was originally filed before the City Civil Court, Chennai and later transferred to the High Court and

re-numbered as Tr. C.S. No. 899 of 2003. In the said suit, entire extent of 2 grounds and 1900 sq. ft. has been shown as the suit property.

Learned Judge held that after the death of N. Krishnamurthy, the property is to be succeeded by all the heirs of the deceased N. Krishnamurthy

and that the suit property is the joint property of Plaintiff and Defendants 1 and 2 and other heirs and granted injunction restraining the Plaintiff-

Govindarajan from encumbering the property. The order of learned Judge in effect is restraining the Plaintiff from alienating or encumbering the

entire extent of the suit property. As pointed out earlier, by virtue of the Will dated 01.02.1981 executed by the grandfather, Plaintiff is entitled to

50% share in the suit property. In respect of the remaining 50%, since N.

Krishnamurthy died intestate the Plaintiff and the Defendants would be entitled to their respective share. The entitlement of the shares and the division of the property is subject matter of the partition suit in C.S. No. 725 of 2005 which is pending in this Court.

51. O.S.A. Nos. 110 of 2011 & 111 of 2010:

In the result, the finding of the learned Judge in T.O.S. No. 43 of 2001 dated 07.10.2009 is confirmed and O.S.A. No. 110 of 2010 is dismissed.

Insofar as Tr. C.S. No. 899 of 2003 granting permanent injunction infavour of Respondents-Defendants 1 and 2 in respect of the entire the suit

property is modified to the limited extent of half share and to that extent, the finding of the learned Judge is modified and O.S.A. No. 111 of 2010

is partly allowed. Consequently, connected M. Ps. are closed. Having regard to the relationship of the parties, there is no order as to costs.