

**(2011) 03 MAD CK 0112**

**In the Madras High Court**

**Case No : T.O.S. No's. 27 of 1998 and 12 of 2003**

P. Sundararama Reddy alias P.S. Reddy (Died) and Others APPELLANT  
Vs

A.S. Divyendar and Miss. Deekshita rep. by father and RESPONDENT  
guardian the first Defendant <BR>P. Lakshmi Devi Vs Mrs.  
Nirmala Devi, Smt. Lakshmi Sailaja, Smt. Lakshmi Thanuja  
and Baby Deekshita rep. by father and natural guardian A.S.  
Divyendar

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**Date of Decision : 31-03-2011**

**Acts Referred:**

Succession Act, 1925 — Section 63

**Citation : (2011) 3 CTC 848**

**Hon'ble Judges : S. Palanivelut, J**

**Bench : Single Bench**

**Advocate : P.B. Ramanujam, for the Appellant; G. Nagarajan, for the Respondent**

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## **Judgement**

S. Palanivelut, J.—The Testamentary Original Suits are filed for grant of Letters of Administration.

2. The following are the contents found in the plaint in T.O.S. No. 27 of 1998:

2.(a) 1st Plaintiff is the father of the testatrix of Will, one Naga Vyjayanthi @ P.N. Vyjayanthi. Since he died on 04.07.2000 during the pendency

of the suit, his legal representatives, wife, mother and two daughters were impleaded as Plaintiffs 2 to 5. 1st Defendant is the husband of the

testatrix/deceased P.N. Vyjayanthi and 2nd Defendant is their minor daughter by name Deekshita represented by father and natural guardian, 1st

Defendant. The minor child was 2 years at the time of execution of the will Ex.P.2 dated 24.4.1994. The testatrix died on 22.9.96 left as her next

of kin and legal heirs, her husband and daughter, 1st and 2nd Defendants respectively.

2.(b) The testatrix bequeathed the following movable and immovable properties to her father/1st Plaintiff absolutely, in his absence to her

mother/2nd Plaintiff, in her absence to her daughter minor Deekshita and in her absence her two sisters viz., E. Lakshmi Sailaja and P. Lakshmi

Thanuja, 3rd and 4th Plaintiffs respectively:

1. Shop bearing Municipal Door No. 9/1, North Usman Road, T. Nagar, Madras-17 comprised in Document No. 2838 of 1968.

2. Kissan Vikas Patras and Indira Vikas Patras in T. Nagar H.P.O and Bank accounts in Canara Bank, Panagal Park and Canara Bank, Anna

Nagar West Extension.

3. All jewellery weighing about sixty sovereigns in State Bank of India, Anna Nagar West in Locker No. 445; Complete Pooja Set and two silver

plates and glasses kept in her in-laws" house bearing Door No. 395, School Road, Anna Nagar West Extension, Madras 600101.

4. Household articles at Bangalore bearing Door No. 1120/A-2, 4th Main, Pipeline Road, Vijaya Nagar, Bangalore-40, such as Godrej

Refrigerator, BPL TV, furniture and kitchenware.

2.(c) The Plaintiffs undertake to duly administer the property and credits of the deceased Mrs. P.N. Vyjayanthi in any way concerning her will by

paying first her debts and the legacies therein bequeathed (if any) so far as the estate will extend and to make a full and true inventory thereof and

exhibit the same in this Court within six months from the date of grant of Letters of Administration to the Plaintiffs and also to render to the court a

true and proper account of the said properties and credits within one year from the said date.

3. In the written statement filed by the Defendants, the following are averred:

3.(a) The suit is neither maintainable in law nor sustainable on facts, that the will dated 24.4.1994 alleged to have been executed by Mrs.

Vyjayanthi is forged and concocted one, created with ulterior motives, that the Plaintiffs have willfully suppressed several facts, that at the

instigation of the parents of Vyjayanthi there was some misunderstanding arose and consequently she was staying at her parents house from

7.10.1995 and in fact she had expressed her willingness to come back and join with Defendant, but in the mean time the death news of Vyjayanthi

was informed to this Defendant on 22.09.1996 and that she fell from the building

of Kasi R.K. Complex at T. Nagar and died.

3.(b) To the knowledge of the Defendant, she did not create any will or any document relating to any property both movables or immovables, that

the property bearing Door No. 9/1, North Usman Road, T. Nagar, Madras, was originally owned by her maternal aunt, Mrs. Rajashri a famous

cine actress, who had settled the same in favour of the Defendant's wife while she was aged about 2 years, out of love and affection, that the

income from the above said property was enjoyed by Vyjayanthi during her life time and she had made several deposits as well as possessed gold

jewelleries and silver articles, that the Defendant had received notice in O.P. No. 646/1996 alleged to have been filed by the 1st Plaintiff

Sundarama Reddy, for the grant of probate of will dated 24.4.1994 alleged to have been executed by Vyjayanthi, which was opposed by the

Defendant, that the recitals of the will give no provision to her only minor daughter, who was staying with her mother till her life time and that at no

point of time, Vyjayanthi ever mentioned about the will alleged to have been executed by her.

3.(c) In the will it is stated that after the life time of the Testator the property shall devolve upon absolutely on her father, 1st Plaintiff and in the

absence of the father it shall devolve upon her mother, 2nd Plaintiff absolutely, which itself clearly proves that the interest of the minor daughter was

never taken into consideration which is obviously something unheard of, that it is crystal clear that the will dated 24.4.1994 is a concocted one or

while she was unsound mind or could have been written under duress, coercion, compulsion, and for the pressure of the Plaintiff and his wife who

had taken advantage of the deceased while she was staying at their residence for a short while.

3.(d) It is also pertinent to note the age of the deceased Vyjayanthi at the time of execution of the will. She was only 26 years and there could not

have been any necessity to execute such a will at such an early age itself will speak the truth, that the Plaintiff seems to have withdrawn fixed

deposit from Sundaram Finance, Chennai within few days from the date of death of Vyjayanthi that too even before the ceremonies are over,

which facts the Plaintiff had suppressed in this suit, that it is significant to note that the will alleged to have been executed on 24.4.1994 at the

residence of Plaintiffs, while admittedly the deceased was residing with this Defendant and she left to her parent's house only on 7.10.1995 itself

prove absolutely when there was no ill feeling between the Defendant and his wife, there is no necessity to execute any will that too bequeathing the

entire property in favour of the Plaintiff absolutely and if he is not alive then to his wife absolutely and thereafter if none of them were alive it will go

to her daughter Deekshita and that in these circumstances, the suit has to be dismissed as devoid of merits with cost.

4. In the plaint in T.O.S. No. 12 of 2003 it is stated as follows:

4.(a) The testator of will dated 23.06.1999, one Sundararama Reddy husband of the Plaintiff, died on 04.07.2000, leaving behind his legal

representatives his wife/Plaintiff, mother, two daughters and baby Deekshita, daughter of deceased daughter Naga Vyjayanthi. He bequeathed his

self-acquired properties viz., two shops bearing Municipal Door No. 10, North Usman Road, T. Nagar, Chennai; Property bearing door No. 14,

Padmanabhan Street, North T. Nagar, Chennai; Deposits in various Benefit Funds and Bank situated in Chennai; Jewellery and house-hold

articles; all properties, jewellery, deposits and bank accounts bequeathed to the testator by his second daughter P. Naga Vyjayanthi, and

Ambassador Car bearing Regn. No. MSV 3306, to his wife/Plaintiff.

4.(b) The Plaintiff undertakes to administer the property and credits of the deceased P. Sundararama Reddy, any way concerning his will by

paying first his debts and the legacies therein bequeathed (if any) and so far as the estate will extend and to make a full and true inventory thereof

and exhibit the same in the Court within six months from the date of grant of Letters of Administration to the Petitioner and also to render to the

Court a true and proper account of the said properties and credits within one year from the said date.

5. In the written statement filed on behalf of 4th Defendant, the following are alleged:

5.(a) The Plaintiff, mother of late P.N. Vyjayanthi and grand mother of the 4th Defendant seems to have filed the suit for probating the will dated

23.6.1999 executed by her husband late P. Sundararama Reddy cannot be entertained in view of the fact that already one of the property i.e.,

Shop No. 9/1, North Usman Road, T. Nagar, Chennai-17 is the subject matter of

T.O.S.27 of 1998 on the file of this Court, that in the said suit

the testator of the present will was the Plaintiff, that he had no right to execute any will in respect of the aforesaid property, that the will seems to

have been created by the Plaintiff and other legal heirs of Sundararama Reddy in order to snatch away the property devolved upon this Defendant,

that apart from the immovable property, movables such as jewellery, deposits and bank account owned by the mother of this Defendant were also

included in this will, which is also the subject matter of T.O.S. No. 27 of 1998 and that the suit is neither maintainable in law nor sustainable on

facts and probate cannot be granted to the Plaintiff and the same is liable to be dismissed in toto.

6. On the strength of the above said pleadings, the following issues were framed by this Court:

In T.O.S.27 of 1998

(i) Whether the will dated 24.09.1994 is a true, genuine and valid document executed by late Mrs. Vyjayanthi in the presence of two attesting

witnesses and in a sound and disposing state of mind?

(ii) Whether the will dated 24.04.1994 is forged and concocted document?

(iii) Whether the Plaintiffs are entitled to the issuance of letters of administration with the original will?

(iv) to what relief the Plaintiffs are entitled to?

In T.O.S. No. 12 of 2003

(i) Whether the will dated 23.06.1999 is a true, genuine and valid document executed by late Mr. Sundarama Reddy @ P.S. Reddy in the

presence of two attesting witnesses and in a sound and disposing state of mind?

(ii) Whether the will dated 23.06.1999 is forged and concocted document?

(iii) Whether the Plaintiff is entitled to the issuance of letters of administration with the original will?

(iv) to what relief the Plaintiffs are entitled to?

Issue Nos. 1 and 2 in T.O.S. No. 27 of 1998:

7. The testatrix of Will Ex.P.2 is one Naga Vyjayanthi daughter of deceased Plaintiff P. Sundararama Reddy @ P.S. Reddy and pending trial of

the suit he expired. Hence, his legal representatives, his wife second Plaintiff, daughters 3rd and 4th Plaintiffs and mother 5th Plaintiff were

impleaded. Naga Vyjayanthi was married to the 1st Defendant by name A.S. Divyendar on 28.5.1990. Out of their wedlock a female child by

name Deekshita was born on 11.06.1992. Vyjayanthi was aged 26 years and the minor child was 2 years at the time of execution of the

unregistered will Ex.P.2 dated 24.4.1994. Vyjayanthi died on 22.9.1996 as evident from Ex.P.1. Bickering and misunderstandings between herself

and 1st Defendant, culminated in matrimonial proceedings before the Family Court at Chennai. Ex.P.3 is copy of O.P. No. 1193 of 1992, filed by

the first Defendant against his wife for restitution of conjugal rights. Ex.P.6 is another petition in O.P. No. 1345 of 1995 filed by him against his wife

for dissolution of marriage.

8. The immovable property in Shop No. 9/1, North Usman Road, T. Nagar, Madras-17 and other movables viz., Kissan Vikas Patras, Indira

Vikas Patras on the file of the Head Post Office, T. Nagar, Madras, Jewellery weighing 60 sovereigns kept in Locker No. 445, in State Bank of

India, Anna Nagar West Branch, Madras, certain silver articles and house hold articles belonged to Naga Vyjayanthi. She had executed Ex.P.2

Will on 24.04.1994 bequeathing the above properties in favour of his father absolutely. She has further provided in the will that in the absence of

her father, the said properties should devolve absolutely on her mother and in her absence, they should devolve absolutely on her daughter minor

Deekshita and in the absence of her daughter, the properties should devolve upon her sisters E. Lakshmi Sailaja and P. Lakshmi Thanuja, equally.

Ex.P.2 is holograph will written by the testatrix with her own handwriting. At the end of the will, she affixed her signature and below that two

attesters, P.W.3 one Nazeer and one B.V. Nagendra were signed. In order to prove the execution and attestation of the will, the Plaintiff brought

P.W.3 to the witness box.

9. P.W.3 was working as Manager in Hotel Rainbow. He was residing behind the hotel which is adjacent to the Plaintiffs house. At the time of

execution of the will Ex.P.2, the testatrix was residing in her father's house. It is the evidence of P.W.3 that he is friend of Sundararama Reddy,

that he was called by Vyjayanthi to attest the will. Vyjayanthi signed the will in his presence and also in the presence of one another Andhra man,

that the testatrix saw them signing the will and that at the time of execution of

the will she was in a sound and disposing state of mind. After the execution of the will, she was alive for two years and she was healthy till her death, he further adds. In his cross examination, he says that at the time when the testatrix called him to her house, her father Sundararama Reddy was not there and that he did not ask her as to why no provision was made in the will for her daughter. He knew the fact that the testatrix committed suicide. He says in his cross examination that he asked the parents of Vyjayanthi as to why she had committed suicide and they told him that there were some misunderstandings between her and her husband. He denies the suggestion that he signed the documents as shown by Mr. Sundararama Reddy subsequently and not on the date as mentioned therein and before the testatrix. He also denies the suggestion that Vyjayanthi was mentally ill.

10. It is the defence of the first Defendant that Vyjanthi was mentally not sound at the time of execution of the will and the said illness prompted her to commit suicide by jumping from the upstairs at Kasi Arcade premises where her parents were residing. As far as the evidence of P.W.3 is concerned, is satisfactory and convincing by means of which it is shown that the executrix executed the documents and he attested to it. One another circumstance that Ex.P.2 being a holograph will itself would indicate the due execution and attestation of the same.

11. The learned Counsel for the Plaintiff Mr. P.B. Ramanujam would contend that since Ex.P.2 is holographic will, a limited, a formal evidence is needed to prove its execution and attestation. In support of his contention, he placed reliance of the Constitution Bench decision of the Supreme Court in *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, wherein Their Lordships have formulated the principles as regards the proof of holograph will as well as the other circumstances attending to the execution of the will. The operative portions of the judgment are as follows:

4. The principles which govern the proving of a will are well settled; (see *H. Venkatachala Iyengar v. B. N. Thimmajamma*, and *Rani Purnima Devi v. Khagendra Narayan Dev*, ). The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of

the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveat or 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. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. ....

...

5.... Further the fact that the will is a holograph will and admittedly in the hand of the testator and in the last paragraph of the will the testator had stated that he had signed the will in the presence of the witnesses and! the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this will and it will in our opinion require very little evidence to prove due execution and attestation of the will. There is no doubt about the genuineness of the signature of the testator, for it is admitted that the signature at the foot of the will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity right up to



March 1947, even though he was an old man of about 97 when he died on April 1, 1947. The dispositions made in the will are by no means unnatural and where the testator has deprived any of his descendants of any share of his remaining property he has given reasons for it. Besides he had already disposed of the large bulk of his property worth about rupees sixty lacs and the will only deals with a small residue worth about rupees three lacs. There is nothing to show that the dispositions were not the result of the free will and mind of the testator. Further, the propounders (namely, the Appellants) had nothing to do with the execution of the will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses and of the handwriting expert on whose opinion alone practically the High Court has held that the will was not duly executed and attested.

12. In *Joyce Primrose Prestor Vs. Vera Marie Vas and Others*, , the Supreme Court has placed reliance upon a decision in *Sashikumar*

*Banerjee*'s case *supra* and observed that the requirement is only to formally prove will and very little evidence is needed for due execution and

attestation of will in case of "holograph" wills. Following the principles laid down the in above said decisions, it is held that being the will a

holograph one, its execution and attestation have been amply proved by the evidence of P.W.3. Yet another circumstance is that D.W.1, the first

Defendant would admit in his cross examination that the will is in the handwriting of his wife and the same was signed by her. In view of the above,

it is held that Ex.P.2 will dated 24.4.1994 is true and genuine one executed by late Mrs. Naga Vyjayanthi and that it is not a forged or concocted

document .

13. As to the sound and disposing state of mind, at the time of execution of the will, the Court has to analyse and scan the evidence available on

record. The testatrix was 26 years at the time of execution of the will. It is too young at the age of 26 years for a person to anticipate death in the

near future and to make disposition of his properties to be enjoyed by the persons as per his desire. The testatrix had committed suicide. P.W.1

would deny the suggestion that since her daughter was mentally retarded, she committed suicide and in view of her mental illness she could not

have executed the will on her own. There is no documentary proof to show that the testatrix was suffering from mental retardation or mental illness

at the time of execution of the will. P.W.1 has not spoken about the decision of the testatrix to take the extreme step of committing suicide, either in

her chief examination or in her cross examination. It is her repeated versions that her daughter was hale and healthy at the time of writing the will.

14. In this context, the disposition in the will made by the testatrix has to be looked into. She has absolutely bequeathed all the properties to her

father and in his absence to her mother absolutely and only in the absence of both, her minor daughter would take them absolutely. She has not

cited in the will any reason for the need of aforementioned disposition. It is not known what prompted her to make her father an absolute owner of

her properties in the presence of her daughter. She has not indicated any cause in her will for the exclusion of her daughter at the first instance.

P.W.1 would explain the circumstance that since Deekshita was with them, Vyjayanthi has not made any provision in the will for her daughter. It is

also in evidence that Deekshita was given custody with 1st Defendant at one point of time. Though there were misunderstandings between both the

testatrix and her husband, they subsequently joined in March 1993 and as admitted by P.W.1 when the will was written, there was no separation

nor any discord between the testatrix and her husband and once she visited her house, she has written the will.

15. The above said circumstance would unearth the fact that at the time of execution of the will, there was no love lost between the testatrix and

her husband. Even if she had debarred her husband, it is expected that she should have given adequate reasons for excluding her daughter.

16. It is in the cross examination of P.W.1 that both her daughter and her husband with child were living together from 1992 to 1995. Even though

P.W.3 states that the parents of the testatrix informed him that due to misunderstanding between her and her husband, she committed suicide, the

same was not spoken by P.W.1 in her evidence. Her evidence is silent about the reason for which she committed suicide. Ex.P.7 is copy of the

police complaint dated 10.10.1995 given by Vyjayanthi against her husband stating about physical and mental harassment for dowry. But from the

evidence, it transpires that the testatrix was in the house of Plaintiff. The fact of execution of the will was not informed to 1st Defendant. As per

P.W.1 there is no material to discern that due to misunderstandings between testatrix and her husband she committed suicide. Police complaint came to existence much later to the will.

17. As to the reason for writing the will P.W.1 says that she does not know the reason why the will was written by her daughter. As regards the

execution of the will by testatrix at her age of 26 years, the learned Counsel for Plaintiff would submit that it cannot be a suspicious circumstance,

placing reliance upon a decision of the Supreme Court in Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others, . In this

judgment Their Lordships while enumerating various suspicious circumstances to be scrutinised by the Court, have observed that when the testatrix

was 50 years of age, it is not unnatural for her to execute a will. The relevant portions of the judgment are as follows:

15.... Some of the suspicious circumstances of which the court has taken note are: (1) The propounder taking a prominent part in the execution of

a Will which confers substantial benefits on him; (2) Shaky signature; (3) A feeble mind which is likely to be influenced; (4) Unfair and unjust

disposal of property. (See in this connection: H. Venkatachala Iyengar v. B.N. Thimmajamma and Ors. (1959 Supp. (1) SCR 426), Smt. Indu

Bala Bose and Others Vs. Manindra Chandra Bose and Another, and Guro (Smt.) Vs. Atma Singh and Others, . Suffice it to say that no such

circumstances are present here.

16. Learned Advocate for Respondents 1 to 5 has submitted that Babubai was only fifty years of age when she died. She was enjoying normal

health. There was no reason for her to make the Will. But in the Will itself Babubai has mentioned that she is suffering from physical weakness

although she is not a very old person and hence she is making the Will. In any case, motive for making the Will is not really relevant. The fact that

testatrix made a Will at the age of fifty cannot be considered as a suspicious circumstance reflecting on the genuineness of the Will.

18. In the above said decision, even though there was no reason for the testatrix to make the will, she has specifically mentioned that since she was

suffering from physical weakness, she was making the will. Even though the

reason for writing the will is absent in the will, it need not be suspected.

But when the testatrix was about 26 years of age, it is expected that she had to furnish reasons for executing the will, as per the above said

decision. But the motive for making the will is held to be not relevant Following the decision aforementioned, even there is no reason for the

execution of the will, it is not a criterion to lay suspicion over the will. But as regards the another circumstance viz., a feeble mind which is likely to

be influenced and unfair and unjust disposal of the property, the Court has to see whether such circumstances are prevailing in this case.

19. Learned Counsel for the Plaintiffs has cited the following decisions for the proposition that a person who alleges undue influence, fraud and

forgery has to prove them. They are as follows:

1 Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta,

2 Meenakshiammal (Dead) through LRs. and Others Vs. Chandrasekaran and Another,

3 Joyce Primrose Prestor Vs. Vera Marie Vas and Others,

4 Daulat Ram and Others Vs. Sodha and Others,

20. It is incumbent upon the first Defendant to prove that the will was the product of undue influence and coercion exerted upon the testatrix by her

parents. The available circumstances are before the date of death of the testatrix on 22.9.1996, there were no misunderstandings between the

spouses. On 9.11.1995, 1st Defendant issued a notice to his wife to hand over the custody of the child within 24 hours. He also filed O.P. No.

1345 of 1995 for divorce and custody of the child. He also says that after the complaint, all the items mentioned in the police complaint were

returned by him to his wife in the police station itself and the complaint was closed.

21. Whatever may be the reason for her to commit suicide, the Court has to evaluate the circumstances which were prevailing at the time of the

execution of the will. Admittedly, there had been no misunderstanding between the testatrix and her husband at the time of the execution of the will.

In 1994 she was living wither husband and child in her husband's house and she paid a visit to the Plaintiffs house once and at that time she

executed the will, as per P.W.1.

22. The learned Counsel for the first Defendant Mr. G. Nagarajan would garner support from a Division Bench decision of this Court in J. Mathew

(died) and Others Vs. Leela Joseph, in which it is held as follows:

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. Even though execution and attestation of Ex.P.2 has been found to be true, still the mind set of the testatrix is yet to be ascertained, which is to be

established by the propounder that out of her own volition she executed the will and it is incumbent upon her to show that there was no compelling

circumstances pressurising the testatrix to execute the will. When there had been no failure of understanding between the spouses, there was no

necessity for the testatrix to execute the will in her 26 years of age, excluding her husband, more particularly her minor daughter aged 2 years.

24. In Shashi Kumar Banerjee's case supra, Their Lordships have held as follows:

4.... 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 ....

25. When a doubt arises as to the mental condition of the testatrix at the time of the execution of the will, it is the duty cast upon the propounder to

displace the same. But P.W.1 in her evidence has not stated as to when there was no difference of opinion between the spouses, what prompted

her to execute the will, making father of testatrix as absolute owner excluding her husband and daughter. The above said decision would make it

clear that the testator's mind should be free when he executes the will and the legitimate suspicion should completely be removed by the

propounder. But in this case, there is no evidence to show that out of her own will, the mind of testator had executed the will. It is observed that

under coercion and undue influence, she had executed the will.

26. In view of the above said circumstances, this Court is of the firm view that Ex.P.2 will has been brought about by the parents of the testatrix by

undue influence and coercion and it is vitiated them on this account. Even though the execution and attestation have been found to be true, the

mental alertness of the testatrix has also not been proved by the Plaintiffs to be all right. These issues are answered as indicated above.

Issue Nos. 1 and 2 in T.O.S. No. 12 of 2003

27. Father of Vyjayanthi, Sundararama Reddy had executed Ex.P.2 will, bequeathing all his self-acquired properties including the properties which

are contained in the will executed by Vyjayanthi, in favour of his wife, 2nd Plaintiff herein, absolutely. As for the proof of the said will, P.W.2,

attestor of the will appeared before the Court and says about the execution of the will. He would depose that Sundararama Reddy was his relative,

that he called him to attest the will on 23.06.1999, that he attested the will and one Viswanath also attested the same, that Sundararama Reddy

signed in the presence of the attesters and the attestors signed the will which was seen by Sundararama Reddy and they also saw the testator

signing the will and that the testator Sundararama Reddy was hale and healthy and was in a sound and disposing state of mind at the time of

execution of the will. In the cross examination he would say that Sundararama Reddy is his brother's father-in-law and when he met him, the

testator was hale and healthy, though it is stated in the will that he is suffering from heart ailment and that it is not true to suggest that he signed the

will after the death of Sundararama Reddy, at the request of his wife. There is nothing to disbelieve his evidence spoken to by him in his chief

examination. His evidence is cogent and natural as to the execution and attestation of Ex.P.2 in T.O.S.12 of 2003. The said will is found to be true

and genuine.

28. As regards the validity of the said will, the Court is of the opinion that since the will executed by Vyjayanthi in Ex.P.2 in T.O.S. No. 27 of

1998 could not be upheld and the same has been found to be not enforceable, the will in T.O.S. No. 12 of 2003 is not valid. These issues are answered as above.

Issue Nos. 3 and 4 in T.O.S. No. 27 of 1998 and

Issue Nos. 3 and 4 in T.O.S. No. 2 of 2003

29. This Court has undertaken an elaborate discussion on the evidence both oral and documentary available in these cases, in the light of the

settled judicial pronouncements and reached conclusion that the will executed by Vyjayanthi, though true and genuine, it is not valid and hence no

right could flow from the document to Sundararama Reddy. Consequently, he could not bequeath the property which he treated to have acquired

from the will executed by his daughter, by means of Ex.P.2 in T.O.S. No. 12 of 2003 in favour of his wife. Hence, the letters of administrations

prayed for in both the suits could not be granted. These issues are answered as indicated above.

30. In fine, both the suits in T.O.S. Nos. 27 of 1998 and 12 of 2003 are dismissed without costs.