
(2017) 04 MAD CK 0263
In the Madras High Court
Case No : 118 of 2007

V.Bethulakshmi

APPELLANT

Vs

V.Vijayalakshmi

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Evidence Act, 1872](#), [Section 114\(e\)](#) -
Court may presume existence of certain facts

Citation : (2017) 04 MAD CK 0263

Hon'ble Judges : C.V.Karthikeyan

Bench : SINGLE BENCH

Advocate : C.V.Karthikeyan

Final Decision : Dismissed

Judgement

1. This appeal had been filed by the Plaintiff in OS.No.235 of 2004, aggrieved by the dismissal of the suit by the I Additional District Judge (PCR) Trichy, by judgement dated 19.12.2006.

2. The above said suit had been filed, seeking partition and separate possession of 1/2 share in the B-schedule property and 1/3rd share in the A-schedule property and for due profits and for permanent injunction and for other reliefs and costs.

3. The Plaintiff and the 1st Defendant are sisters. The Defendants 2 to 4 are the tenants in the suit property. The Defendants 5 and 6 are nationalised Banks, namely, Canara Bank and Indian Bank, wherein it is stated that fixed deposits and other deposits are available, which are also the subject matter, seeking partition. It was stated that the A schedule property is a house property and there was also three shops. The house belonged to one Venkataraman Chettiar, the father of the Appellant, 1st Respondent and their another sister, Bagyalakshmi. and he died in 1951. He executed a Will dated 13.8.1951. According to the said Will, he gave life estate to his wife Navaneetham Ammal.

Thereafter, the property was bequeathed to his three daughters, viz. the Plaintiff, V.Bethulakshmi, the 1st Defendant V.Vijayalakshmi, and the deceased V.Bagyalakshmi. Navaneetham Ammal died on 30.1.1999. Consequently, the three sisters, namely, the Plaintiff, the 1st Defendant and V.Bagyalakshmi were each entitled to an undivided 1/3rd share in the suit property.

4. The Plaintiff had executed a release deed with respect to her 1/3rd share to the other sister Bagyalakshmi, after receiving consideration. Consequently, V.Bagyalakshmi became entitled to 2/3rd share and the 1st Defendant V.Vijayalakshmi became entitled to 1/3rd share. The said V.Bagyalakshmi is a divorcee. She died intestate on 10.11.2002. Consequently, it is claimed that her 2/3rd share should be divided equally between the Plaintiff and the 1st Defendant in their capacity as legal heirs. The B-schedule property are cash in bank deposits and jewels in bank lockers. The Plaintiff claimed one half share in the suit property. It has been further stated that the tenants, the Defendants 2 to 4 have been paying rents, which were being collected by the 1st Defendant and consequently, accounts were also sought in the plaint.

5. It had been further stated that Bagyalakshmi had sold her property at Annamalai Nagar, Trichy and had invested the said amount in the Defendants 5 and 6 Banks. The Plaintiff had also claimed a share in the said deposits. The Plaintiff had issued a notice to the Defendants dated 28.2.2003. The 1st Defendant had sent a reply dated 19.3.2002, wherein she claimed that a Will dated 3.10.2002 had been executed by the sister V.Bagyalakshmi. The Plaintiff claimed that the Will was executed when V.Bagyalakshmi was not in a sound and disposing state of mind. She had challenged the truth, validity, execution, attestation and registration of the Will. She further stated that a Will could not have been executed since Bagyalakshmi was a chronic cancer patient and her physical and mental health was in a bad condition. She was suffering from advance stage throat cancer. She was not able to speak. She was fed only fluid items. She was treated in the Viswanathan Hospital, Trichy. He was then admitted to Chitrambalam Amsavalli Muthiyoor Illam at Trichy, where she died. It had, therefore, been stated that the Will could not have been executed by the said Bagyalakshmi. It had been further stated that Bagyalakshmi had bequeathed her 2/3rd share to N.Kalpana, the daughter of the 1st Defendant. Subsequently, the said N.Kalpana had settled the suit property by settlement deed dated 10.12.2002 to the 1st Defendant. It had been stated that all the documents are concocted and forged. In the said circumstances, the suit for partition was filed as stated above.

6. The 1st Defendant had filed a written statement, stating that her father Venkataraman Chettiar died on 23.10.1951 and her mother Navaneetham Ammal died on 30.1.1999. The Plaintiff had executed a release deed of her 1/3rd share in the A-schedule property for a consideration of Rs.4,80,000/-. Consequently, the other sister Bagyalakshmi became entitled to 2/3rd share in the suit property. The cash deposits and jewels in the Defendants 5 and 6 Banks had

specifically been denied. It had been stated that the 1st Defendant was not interested in the deposits even if they are available. To the notice sent by the Plaintiff, the 1st Defendant had given a reply wherein it had been stated that Bagyalakshmi had executed a Will dated 3.10.2002. She died on 11.11.2002. The Will came into effect. It was attested by two witnesses and was also registered. It had been stated that Bagyalakshmi was living in the downstairs portion of Door No.20, namely, the suit property. The 1st Defendant and her daughter N.Kalpna were staying in the first floor. Since the 1st Defendant was a Government servant, her daughter Kalpana was in the custody of her mother and Bagyalakshmi. Since she was deeply interested in her, Bagyalakshmi bequeathed her share of the property in her favour under the Will.

7. In May 2002, it was realised that Bagyalakshmi had cancer. She was given medical treatment. She was finally admitted in the said Muthiyor Illam. It had been stated by the 1st Defendant that her daughter Kalpana was married and settled at Erode. It was the 1st Defendant who was looking after the deceased Bagyalakshmi. Thereafter, when she expressed her desire to execute a Will, a request was given to the Sub Register, Srirangam. He came to the said Muthiyor Illam, examined Bagyalakshmi, found that she was in a position to execute the Will and only thereafter, registered the Will. The Will was executed in a sound and disposing state of mind. Since her daughter found it difficult to manage the property, she executed a settlement deed in favour of the 1st Defendant on 10.2.2002. It had been stated that the Plaintiff never visited Bagyalakshmi, when she was admitted in the Muthiyor Illam. It had therefore been stated that the suit should be dismissed.

8. The parties went to trial on the basis of their rival pleadings. As stated above, the Defendants 2 to 4 are the tenants, who are not directly interested in the decisions to be rendered. Similarly, the Defendants 5 and 6 are the nationalised banks. The main issue in the suit was between the Plaintiff and the 1st Defendant. The Plaintiff claimed partition. The 1st Defendant resisted partition in view of the registered Will. The court below, on perusal of the material evidence and documents, recast the issues as follows:-

- 1)Whether Bagyalakshmi died intestate or Bagyalakshmi executed a Will on 3.10.2002"
- 2)Whether the Will executed by Bagyalakshmi is valid and binding on the Plaintiff and whether the Will is enforceable"
- 3)Whether the Bagyalakshmi was in a sound state of disposing mind to understand the execution of the Will at the time of executing the Will"
- 4)Whether the Plaintiff is entitled to a share in the A and B schedule properties"
- 5)To what other reliefs the Plaintiff is entitled to"

9. During the trial, on side of the Plaintiff, the Plaintiff had examined herself as PW.1 and marked Ex.A1 to A11. Among these documents, Ex.A3 dated

27.6.2001 is the release deed executed by the Plaintiff in favour of Bagyalakshmi, Ex.A4 dated 28.2.2003 is the advocate's notice issued by the Plaintiff and Ex.A11 dated 8.8.2002 is the discharge summary of Bagyalakshmi.

10. On the side of the 1st Defendant, the 1st Defendant was examined as DW.1, the Sub Registrar, Srirangam, V.Hariharan was examined as DW.2 and the attester to the Will, who was also the Manager of the Chitrambalam Amsavalli Muthiyoor Illam at Trichy, was examined as DW.3. The 1st Defendant had marked Exs.B1 to B19. These included a copy of the release deed executed by the Plaintiff to Bagyalakshmi as Ex.B5 dated 27.6.2001, the death certificate of Bagyalakshmi dated 5.12.2002 as Ex.B7, the registration and instruction cards of GVN Hospital as Ex.B9 and B10, the receipts issued to Bagyalakshmi in favour of the Trichy Annadhana Samajam as Exs.B1 to B14, the Will executed by Bagyalakshmi dated 3.10.2002 as Ex.B15, the settlement deed dated 10.12.2002 as Ex.B17. Through DW.,1, Ex.X1, which is the copy of the requisition letter seeking registration by Bagyalakshmi and Ex.X2, which is the report and statement of Sub Registrar, Srirangam , were also marked.

11. On consideration of the oral and documentary evidence, the court below held that the Will had been proved in a manner known to law through examination of DW.2, the Sub Registrar, Srirangam and DW.3, one of the attesting witnesses and also found that the Will was executed when Bagyalakshmi was in a sound and disposing state of mind and rejected the suspicious circumstances put forward by the Plaintiff surrounding the execution of the Will and consequently, dismissed the suit. However, cost was not granted. As against the said findings, this appeal had been filed as stated above.

12. This court heard the arguments of the learned counsel on either side.

13. The learned counsel for the Appellant stated that this court would have to determine whether the testator Bagyalakshmi was in a sound and disposing state of mind in view of the advanced stage of cancer and would also have to determine whether the Will was executed in a manner known to law. The learned counsel invited the court to give a finding on the suspicious circumstances surrounding the execution of the Will and also have regard to the unfair distribution of the properties and also to the trustworthiness and reliability of DW.1

14. The learned counsel for the Appellant pointed out Ex.A11, which is the discharge summary of GVN Hospital, in which it has been mentioned that it was advised on discharge of Bagyalakshmi that she must "continue psychiatric medicines". Pointing this factor, the learned counsel stated that the mental condition of the executor V.Bagyalakshmi was shrouded with suspicion. The learned counsel also pointed out Ex.B9 and B10, which are the registration card and instruction card of GVN Hospital and stated that according to Ex.B9, Bagyalakshmi was admitted on 28.5.2002 and according to Ex.B10, radio therapy treatment commenced on 10.6.2002 and she was practically given radio

therapy every day from 10.6.2002 to 20.6.2002 and again on 24.6.2002 and thereafter, once again from 8.7.2002 to 11.7.2002 and again from 16.7.2002 to 18.7.2002 and again from 22.7.2002 to 26.7.2002 and again from 29.7.2002 to 2.8.2002 and again from 5.8.2002 to 7.8.2002. The learned counsel stated that she was given radio therapy treatment 30 times within the said period of two months and consequently stated that the physical and mental condition of Bagyalakshmi would not be conducive to execute any will or even to give instructions to execute any Will.

15. The learned counsel for the Appellant further stated that Bagyalakshmi was discharged on 7.8.2002 and was admitted in the Chitrambalam Amsavalli Muthiyoor Illam at Trichy on 8.9.2002 and it was not disclosed by the 1st Defendant as to where she was during the interregnum period. With respect to the actual execution of the Will, which was marked as Ex.B18, the learned counsel pointed out Ex.X1 which is said to be a letter given by Bagyalakshmi to the Sub Registrar, Srirangam, seeking to execute the Will at the place where she was present, namely, at Chitrambalam Amsavalli Muthiyoor Illam at Trichy. In the said letter, she had originally written 23.9.2002 and scored that date and mentioned as 03.10.2002. The said letter was given through G.Chinnadurai and the learned counsel pointed out that G.Chinnadurai was not examined as a witness in the court. The learned counsel further pointed out that when the testatrix expressed opinion only on 1.10.2002 to write a Will, the date 23.9.2002 in Ex.X1 again points to a suspicious circumstance. Further, the correction in Ex.X1 was not initialled by Bagyalakshmi. The scribe of the Will one Yesudoss was also not examined. The learned counsel further stated that the signature of Bagyalakshmi in each page of the will differed from one another. Moreover, he pointed out that the existence of the Will was not revealed till the suit notice was issued. The learned counsel also pointed out that in the Will, the property was given to the daughter of the 1st Defendant, who immediately by settlement deed dated 10.12.2002 in Ex.B16 settled the entire property to the 1st Defendant. It had been, therefore, stated that the propounder of the Will, namely, the 2nd Defendant played a major role in the execution of the Will.

16. The learned counsel for the Appellant further attacked the evidence of DW.3 who was the Manager of the said Muthiyoor Illam and also the attester, stating that Bagyalakshmi had given donation to the said Muthiyoor Illam and therefore, stated that he was an interested witness. The learned counsel also pointed out the cross examination of DW.3, wherein he stated that Bagyalakshmi was taking only liquid food since she had throat cancer. The learned counsel also pointed out the evidence of DW.2, who left his office at around 5.40 p.m. and completed the registration by 6.15 p.m. and who stated that Bagyalakshmi was lying in the bed and also stated that she was walking. The learned counsel further pointed out that the Doctor who treated the Bagyalakshmi was not examined in the Court.

17. The learned counsel for the Appellant relied on the decision reported in 2007 2 CTC 172 (Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others) and

stated that suspicious circumstances are to be removed by the propounder, particularly, when the propounder takes a prominent part. The conscious of court is to be satisfied that the executor had sound and disposing state of mind. Pointing out all these factors, the learned counsel stated that the Will was flooded with suspicions and consequently urged the court to reverse the findings of the court below.

18. The learned counsel for the 1st Respondent stated that the Appellant herein had released her 1/3rd share in the suit property on receipt of consideration of Rs.4.8 lakhs. Thereafter, the said Bagyalakshmi was looked after only by the 1st Defendant. The daughter of the 1st Defendant was also taking care of the deceased Bagyalakshmi. She was admitted to an Old Age Home. It was only natural that she wanted to execute a Will and it was only natural that she sought help from the 1st Defendant since she was her own sister and she was taking care of her needs in the Old Age Home. The learned counsel further stated that it was the 1st Respondent alone, who can organise with the Sub Registrar and accordingly, a letter was also issued and he had come in person and only after satisfying himself with respect to the mental and physical condition, had registered the said Will. The learned counsel pointed out that according to Section 68 of the Indian Succession Act, at least one attesting witness has to be examined to prove the execution of a will and accordingly, DW.3 has been examined. Moreover, DW.2 is the Sub Registrar and he has also been examined. The learned counsel pointed out the evidence of DW.3 and stated that he withstood the cross examination. The learned counsel pointed out the wordings in Ex.B15, which is the Will, in which it had been clearly stated that the 1st Defendant was the only person who helped the executor. This has to be read in the light of the release deed wherein the Appellant received Rs.4.8 lakhs from the deceased Bagyalakshmi to release her share in the suit property. The learned counsel pointed out that there are no suspicious circumstances and the suit had rightfully been dismissed by the court below.

19. Primarily, this court will have to determine whether the Will Ex.B15 had been executed by V.Bagyalakshmi while she was in a sound and disposing state of mind and whether suspicious circumstances are in fact surrounding the execution of the suit Will.

20. The learned counsel for the Appellant heavily relied on the decision reported in 2007 2 CTC 172 (Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others) cited supra and stated that suspicious circumstances should be removed by the propounder of the Will. In this case, the propounder of the Will is the 1st Respondent. However, the 1st Respondent did not come to court in the first instance. The Appellant had filed the suit for partition. One distinguishing factor in this case is that the Will is a registered Will. With respect to a document, which is registered, under Section 114(e) of the Indian Evidence Act, the court may presume that judicial and official acts have been regularly performed. Section 114(e) is as follows:-

114. Court may presume existence of certain facts:- The court may presume the existence of any fact which it things likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case. Illustrations:-

The Court may presume- (e) That judicial and official acts have been regularly performed". In this case, as stated above, Ex.B15 dated 3.10.2002 is a registered Will.

21. Section 68 of the Indian Evidence Act is as follows:- "68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

In this case, DW.3 is an attesting witness. He has been examined. The learned counsel for the Appellant has challenged the evidence of DW.3 on the ground that the said witness is interested since donations had been paid for the said Muthiyor Illam. I reject the said reason. Ex.B11, B12, B13 and B14 are the receipts issued to Bagyalakshmi by the Tiruchy Annadhana Samajam. They are for a sum of Rs.10,000/- on 8.9.2002, Rs.1700 on 5.10.2002, Rs.1100 on 7.10.2002 and Rs.500 on 15.11.2002. On the other hand, Ex.B14 is the Will dated 3.10.2002. Consequently, the only receipt, which is prior to the execution of the Will is Ex.B11 which is for a sum of Rs.10,000/- This was the actual date on which Bagyalakshmi was admitted in the said Muthiyor Illam. Thereafter, donations were actually made on 5.10.2002, 7.10.2002 and 15.11.2002. On 3.10.2002 when DW.3 was the witness to the Will, he could not have foreseen that on the subsequent dates Bagyalakshmi would be donating money. Consequently, the said stand taken by the learned counsel for the Appellant is rejected.

22. The learned counsel for the Appellant invited the court to consider the dates on which the radio therapy were given for a continuous period and thereafter, stated that according to Ex.A11, Dr.K.N.Srinivasan of GVN Hospital, by discharge summary dated 8.8.2002 had advised to "continue psychiatric medicines". This statement conveys nothing. It is an opinion given by a Doctor who was not examined in court and it is not known whether this incapacitated Bagyalakshmi to such an extent for the entire period of 24 hours continuously from 8.8.2002 till 3.10.2002 and she was never in a mentally sound position to execute the Will.

23. Even in 2007 2 CTC 172 (Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others) relied on by the learned counsel for the Appellant, the Honourable Supreme Court has stated that the circumstances surrounding fraud and coercion and undue influence in the execution of the Will have to be established only by the caveator, namely, the person who challenges the execution of the Will. In this case, the propounder, namely, the 1st Respondent had discharged her duty by examining the Sub Registrar and the attester to the Will. The evidence of the Sub Registrar is categorical in nature, stating that he personally satisfied himself that the testatrix was in a sound and disposing state of mind to execute the Will. In fact, he had stated that he read the Will, he also read over the will to Bagyalakshmi, she understood the same and thereafter, he asked her whether she wanted to execute the Will and she stated that she wanted to execute the Will and only thereafter, he registered the same. He further stated in his examination that in his presence she signed each and every page. He further stated that in his presence, the witnesses signed the document. These proved execution. One of the witnesses who actually attested the Will was examined as DW.3. These two evidences are conclusive proof in so far as the execution of the will is concerned. In so far as the suspicious circumstances are concerned, primarily, the learned counsel for the Appellant challenged the facts regarding physical capacity of Bagyalakshmi to execute the Will. The Sub Registrar is the competent officer to examine and determine the physical condition of the executor. With respect to the mental condition, he had questioned her, he had asked her intention, he had read over the will, she understood the same, she then indicated her preference to execute the Will. These are circumstances which showed that the mental status of Bagyalakshmi had been examined in the only manner known to any Sub Registrar and only thereafter has it been executed. Consequently, the circumstances which are pointed out by the learned counsel for the Appellant cannot be grounds which would lead to reject the Will. In fact, the Appellant had actually released her share in the suit property for a valuable consideration of Rs.4.8 lakhs. It has also come in evidence that it was only the 1st Defendant and her daughter who were looking after the deceased Bagyalakshmi. They admitted her in the hospital. They took care of her when she was in hospital. They admitted her in the Muthiyor Illam. They took care of her in the Muthiyor Illam. Consequently, it was only natural that she would have some gratitude for them. This has to be compared with the attitude of the Appellant, who gave up her share for a valuable consideration of Rs.4.8 lakhs. This indicates that the Appellant had rendered service by relinquishing her share for money while the 1st Respondent rendered service out of love and affection.

24. The contention of the learned counsel for the Appellant that G.Chinnadurai, who had taken the requisition letter Ex.X1 to the Sub Registrar Office was not examined and that there were corrections in Ex.X1 do not hold water since the Appellant could have also issued subpoena and called upon him to speak about Ex.X1. Ex.X2 is the report and statement of DW.2. In the same, he has reproduced the entire Will and has also signed in the same. The Register having

the thumb impression of Bagyalakshmi was also annexed to Ex.X2. It is seen that since she was suffering from cancer and the Will was executed in the Muthiyor Illam. In Ex.X2, DW.2 had given a certificate that he had satisfied himself that Bagyalakshmi understood the contents of the Will and only thereafter, he had registered the same. All these factors show that the Will had been executed and registered in the manner provided under law and I find no reason to interfere with findings of the court below. The burden was on the Appellant to prove coercion and undue influence and the Appellant has not even attempted to establish the same. On the other hand, the 1st Defendant had proved execution and registration in accordance with legal requirements and had consequently also removed any circumstance which can be remotely termed as suspicions.

25. An issue regarding genuineness of a registered document and the mental capacity of the testator who was unwell at the time of execution of the Will, and who had excluded the natural heirs, who in turn put forward suspicious circumstances, came up for consideration before the Honourable Supreme Court in 2007 11 SCC 621 (Savithri and others Vs. Karthyayani Amma and others), wherein the Honourable Supreme Court had held as follows:- "17. The legal requirements in terms of the said provisions are now well- settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act . The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.

18. We may, however, notice that according to the appellants themselves, the signature of the testator on the Will was obtained under undue influence or coercion. The onus to prove the same was on them. They have failed to do so If the propounder proves that the Will was signed by the testator and he at the relevant time was in sound disposing state of mind and understood the nature and effect of disposition, the onus stands discharged. For the aforementioned purpose the background fact of the attending circumstances may also be taken into consideration. "

26. In 2007 2 CTC 172 (Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others), relied on by the Appellant, the Honourable Supreme Court had actually held :

"32. Section 63 of the Indian Evidence Act lays down the mode and manner in which the execution of an unprivileged Will is to be proved. Section 68 postulates the mode and manner in which proof of execution of document is required by law to be attested. It in unequivocal terms states that execution of Will must be proved at least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A Will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Indian Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.

33. 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. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document"

27. In *Ramabai Padmakar Patil (Dead) though L.Rs. and Others v. Rukminibai Vishnu Vekhande and Others* [(2003) 8 SCC 537], this Court held as follows:-

8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring."

28. In this case, the additional factor is that the Will has been registered and DW.2, who is the Sub Registrar, has been examined and Ex.X2, which is his report has also been filed. DW.2 has been cross examined by the learned counsel for the Appellant. The witness withstood cross examination. Moreover, a presumption that an official act had been done in accordance with law and the rules prescribed has to be drawn in favour of the Sub Registrar in accordance with Section 114(e) of the Indian Evidence Act. The propounder of the Will had

also examined DW.3, one of the attesting witnesses. The onus is heavily on the Appellant to prove undue influence and coercion. There is no appreciable evidence except for stating that V.Bagyalakshmi was suffering from cancer and therefore influenciabile. Suffering from cancer is a bona fide reason to execute a Will. She was looked after by the daughter of the 1st Respondent and she bequeathed her share to the said daughter. Consequently, I hold that there is no reason to interfere with the impugned judgement upholding the validity of the registered Will.

29. In the result, this appeal suit is dismissed. However, considering the relationship among the parties, there will be no order as to costs.