PENTAKOTA SATYANARAYANA AND ORS. A

v.

PENTAKOTA SEETHARATNAM AND ORS.

SEPTEMBER 29, 2005

[RUMA PAL AND DR. AR. LAKSHMANAN, JJ.] B

Hindu Law

Hindu Succession Act, 1956—Testamentary Succession—Evidence Act, 1872—Sections 68, 114—Execution and proof of Will—Deceased father executing Will in favour of appellants, children through second wife—Will attested—Attestor examined proving sound disposing state of mind—Signature of sub-registrar at the time of registration—Written Statement filed by testator in a suit filed by alleged adopted son about execution of Will—Held, the execution of Will proved beyond doubt. C D

Will—Suspicious circumstances—Alleged adopted son claiming execution—Propounder merely present during registration—Held, mere presence of propounder is not a suspicious circumstance.

Adoption—Proof of—Foster son claiming to have been adopted—Written statement filed by adoptive father denying adoption—No date of adoption—No ceremony of venue of adoption nor any specific custom pleaded—Held, adoption not proved. E

One P father of the appellants got married with the first respondent. Since the marital life with the first wife was not very happy, P started living with one A who was divorced from her first husband as per caste custom in the year 1954. A and P started living as man and wife in the same village itself. A was accepted as the second wife. P and A begot two sons, viz., the appellants. The second respondent is the youngest son of natural brother of P. His father and mother died when he was aged hardly 3 years. P brought him up and fostered him. The appellants' father performed the marriage of his daughter in a befitting manner and printed invitation cards in his own name as father. He executed a Will regarding his properties and got it registered. Under the said Will, he made a provision to the first wife, - the first respondent herein for a decent living and given the rest of his properties F G

 H

A to the appellants born through A (second wife). First wife of P filed a suit seeking a decree for maintenance with a charge on P's half share in the plaint schedule property and to provide her separate residence. It was stated in the plaint that P died intestate pending the suit and that the Will is neither true nor valid nor binding on her. She also denied the execution, attestation, registration etc. It was claimed in the plaint that consequent on the death of
B P, the right of the plaintiffs against the estate of the deceased P comes into effect.

The second respondent filed a suit seeking a decree for partition and separate possession of his half share in the family properties claiming for
C the first time as the adopted son of P and his first wife. The appellants were added as LRs of the deceased first defendant. It was stated in the plaint that his adoptive parents requested the natural parents in the year 1966 to give him in adoption to them and he was given in adoption to P and that the adoption ceremony took place in accordance with Hindu law, customs and usage. It was further stated that P died intestate and on his death his share of the plaint
D schedule properties devolved upon his widow and the adopted son and consequently he will be entitled to not only his half share as adopted son but also half share in the share of P. So in all he claimed 3/4th share in all the plaint A, B and C schedule properties in the plaint, and the remaining 1/4th share for the first wife.

E The appellants' father P contested both the suits and filed written statement. He denied the adoption and stated that he came into contact with one A who divorced her husband as per their caste custom the year 1954 and they started living as man and wife and begot two sons and one daughter and brought them up and performed their marriages. It was further pleaded that
F during the year 1980, he executed a Will in respect of his properties and got it registered. P died pending suit. The suits were decreed and the appeals by the appellants also dismissed. Before this Court, Appellant contended that the High Court and the Courts below cannot overlook Ex.B9 a registered Will when they have recorded a finding that the Will is proved as incompliance with the requirement of Section 68 of the Evidence Act, 1872 though there is
G no material on record to show that the Will was executed in suspicious circumstances to the satisfaction of the Court, that the Courts below failed to note that the evidence of DW5 and 6 goes to show that the Will was executed by the deceased father of the appellants on his own volition without any pressure from any side, that Respondent No. 2 was not a member of the family
H and he was not adopted, that P was alive when the suits were filed and he filed

a detailed written statement which had a vital bearing on the adjudication of the case, that Respondent No. 2 was the son of his elder brother and he was never adopted but was only looked after since his parents died young, that he has executed a Will regarding his properties and got it registered in 1980 and that he made a provision to his first wife for a decent living and gave the rest of the properties to the appellants herein who he claimed were his children, that Respondent No. 2 and his brothers hatched upon a plan to grab at the property and the suit was virtually a result of that concerted action, that before the suit came up for trial, P died and as such he could not be examined, and that the crucial questions that arise in this case are the validity of the Will dated 20.02.1980 Ex.B9 and the genuineness of the factum of adoption.

Respondents contended that the suits filed by the appellants are based on the alleged right arising out of the will executed by P and that the trial Court as well as the High Court disbelieved the Will and dismissed the suits, that the appellants have not even made any submissions before the High court that the property is not the joint family property, that there was neither pleading, evidence, submission, finding nor any ground in appeal, the High court correctly concluded that the properties in question are ancestral properties and there is no evidence or pleading to show that the same are the self-acquired properties of the first defendant, that the appellants have not raised the plea with regard to the nature of the property being joint or self-acquired and, therefore, the appellants should not be permitted to raise this issue before this Court without a pleading or ground either before the High Court or before this Court, that the Courts below have given concurrent findings on pure question of facts, that Court would not ordinarily interfere with these findings and review the evidence for the third time unless there are exceptional circumstances justifying the departure from this normal practice, that defendant No. 1 adopted defendant No. 2 from his natural parents as per Hindu law, customs and usage and in view of the said adoption, defendant No. 2 is entitled to his half share in the said property, that on a perusal of the evidence of all the witnesses, it can be seen that the factum of adoption of D2 by plaintiff and D2 is amply proved and that their evidence has been duly corroborated by the oral evidence, that for a valid adoption the law requires that the adoptive child should be handed over by its natural parents to the adoptive parents, who shall receive it, that the Will is replete with false statements, on the basis of the evidence of the appellants themselves, that the statement about the paternity of the appellants is false and it is evidenced by various documents and that the propounder takes active interest in getting

A the Will executed which give rise to a suspicious circumstance.

Allowing the Appeals, the Court

HELD: 1. The Will is a registered Will. DW5, the attestor and DW6, the scribe have been examined to prove the Will. As already noticed, the Will
B gives property to respondent No. 1 - the first wife of the testator and the remaining properties to the appellants, who according to the testator, were his children through his second wife. The written statement filed in the suit by P is one of the most important factors which authenticates the genuineness of the Will. No evidence has been led in by the respondents to show the exercise of any fraud or undue influence at the time of execution of the Will. No
C evidence was adduced to show that the testator is not in sound state of mind and in fact, the finding is that he was of sound mind. The evidence adduced by the appellants/propounders are sufficient to satisfy the conscience of the court of law that the Will was duly executed by the testator. [735-E-F-G-H]

2. The findings of the High Court and the trial Court are not only
D contrary to the facts on record but also overlooked the law governing the aspects of proof of Will. Section 68 of the Indian Evidence Act, 1872 deals with proof of execution of document required by law to be attested. This section lays down that if the deed sought to be proved is a document required by law to be attested and if there be an attesting witness alive and subject to process
E of the Court and capable of giving evidence, he must be called to prove execution. Execution consists in signing a document written out, read over and understood and to go through the formalities necessary for the validity of legal act. [736-C-D-E]

3. A perusal of Ex.B9 (in original) would show that the signatures of
F the Registering Officer and of the identifying witnesses affixed to the registration endorsement were sufficient attestation within the meaning of the Act. The endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also
G taken in the document. After all this, the sub-registrar signed the deed. [737-C-D-E]

4. Unlike other documents the Will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his Will or not
H and this aspect naturally introduces an element of solemnity in the decision

of the question as to whether the document propounded is proved to be the last Will and the testament of departed testator. In the instant case, the propounders who were required to remove the said suspicion have let in clear and satisfactory evidence. There was unequivocal admission of the Will in the written statement filed by P. In his written statement, he has specifically averred that he had executed the Will and also described the appellants as his sons and A as his wife as the admission was found in the pleadings. The case of the appellants cannot be thrown out. As already noticed, the first defendant has specifically pleaded that he had executed a Will in the year 1980 and such admissions cannot be easily brushed aside. However, the testator could not be examined as he was not alive at the time of trial. All the witnesses deposed that they had signed as identifying witnesses and that the testator was in sound disposition of mind. Thus, in our opinion, the appellants have discharged their burden and established that the Will in question was executed by P and Ex.B9 was his last will. [737-D-E-F; 737-G-H; 738-A-B-C]

5. It is true that registration of Will does not dispense with the need of proving, execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. The Registrar has made the following particulars on Ex.B9 which was admitted to registration, namely, the date, hour and place of presentation of document for registration, the signature of the person admitting the execution of the Will and the signature of the identifying witnesses. The document also contains the signatures of the attesting of the identifying witnesses. The document also contains the signatures of the attesting witnesses and the scribe. Such particulars are required to be endorsed by the Registrar along with his signature and date of document. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the endorsement of registration were regularly and duly performed and are correctly recorded. The burden of proof to prove the Will has been duly and satisfactorily discharged by the appellants. The onus is discharged by the propounder adducing *prima facie* evidence proving the competence of the testator and execution of the Will in the manner contemplated by law.

[738-C-D-E-F]

6. It is settled by catena of decision that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that

A the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. [738-F-G-H]

Sridevi and Ors. v. *Jayaraja Shetty and Ors.*, [2005] 2 SCC 784, referred to.

B 7. The circumstances of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of the will is to be interfered in the normal line of succession and so natural heirs would be debarred in every case of the Will. It may be that in some cases they are fully debarred and some cases partly. The findings of the High Court and the trial C court about the alleged suspicious circumstances are palpably erroneous. In fact, the circumstances are not suspicious at all. As far as the High Court is concerned, it has only gone by the exclusion of the Respondent No. 2 in the Will and bequethal of major portion to the appellant. This is legally no ground to negate the Will. Further, once the Will is duly proved, the Will has to be given effect to. In this case, admittedly and even according to PW1 the testator D P and AK were living together as man and wife. Therefore, there is nothing wrong if the will refers to AK as wife of the testator. Similarly, the testator has referred to the appellants as his children in the Will. The very same stand has been maintained the written statement filed by P. There is ample evidence to prove that P has treated the appellants as his children and solemnized their E marriages. [739-C-D-E-F]

Uma Devi Nambiar and Ors. v. *T.C. Sidhan (Dead)*, [2004] 2 SCC 321, referred to.

8. The trial Court has made much about the draft Will aspect. This is hardly a suspicious circumstance. DW6 says that 4 male persons accompanied F D1. This is hardly a suspicious circumstance. DW5 states that there was another person whom he would not identify. The deposition was given in 1997 (i.e. 17 years after the registration of Will) and the courts below ought not to have made a mountain out of a molehill and on that basis reject a duly executed registered Will. DW4 (Appellant No. 1) in his evidence said that testator alone G went to execute the Will. He also states that he also went there and he does not know whether his mother and brother accompanied him. He says that he has not seen the writing of the Will and he was not present at the time of registration. He also says that he did not go to the place where the document was scribed. Applying the law as set out above and assuming the worst against the appellants, no case of undue influence, coercion or fraud is made out to H negate the Will. The mere presence of DW4 (appellant No. 1) would not make

it a suspicious circumstance. Assuming the presence to be true, that does not mean undue influence was exercised and mere presence does not mean that a prominent part was played. Hence the Will has been duly proved by the appellants. [740-G-H; 741-A-B-C] A

9. The evidence for adoption given by PWs1, 3 and 6, DW2 and DW3 falls short of the required proof in law. The Respondents have a heavy onus to discharge the burden which lies on them to prove the factum of adoption. No date of adoption is given nor venue of the ceremony was given in the plaint. No specific custom is pleaded and it is not even pleaded that giving of coconut is part of the ceremony. None of the witnesses have deposed the date of alleged adoption function. The alleged adoption is not true and valid and the alleged adopted son has no right in the suit property and *mesne* profits. It is now proved beyond doubt that the suit property is to belong to the appellants. Therefore, the question of paying the *mesne* profits does not arise. Since the appeals are now allowed, *mesne* profits are due from the respondents. The appellants are at liberty to claim the *mesne* profits and recover the same from the respondents herein. The Will ExB9 is a true and genuine document and the appellants and P will be entitled to the properties respectively allotted to them under the said Will. The alleged adoption is not true and, therefore, the alleged adopted son has no right or any interest in any of the suit properties. In view of the fact that PS has been given some properties under the Will under Section 22 of the Hindu Adoption and Maintenance Act, she is not entitled to any maintenance. [742-F-G; 743-G-H; 744-E; 745-E-F-G-H] B C D E

Rahasa Pandiani (Dead) by LRs and Ors. v. *Gokulananda Panda and Ors.*, [1987] 2 SCC 338 and *Kishori Lal* v. *Mt.Chaltibai,* AIR (1959) SC 504, referred to.

Madhu Sudan Das v. *Smt. Narayanibai and Ors.*, [1983] 1 SCC 35; *Lakshman Singh Kothari* v. *Smt. Rup Kanwar,* [1962] 1 SCR 477 and *L. Debi Prasad (Dead) by LRs* v. *Smt. Tribeni Devi and Ors.*, [1970] 1 SCC 677, cited. F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5941-5942 of 2005. G

From the Judgment and Order dated 20.6.2003 of the Andhra Pradesh High Court in A. Nos. 720/97, 990/97 and Cross Objections.

K.V. Vishwanathan, A. Ramesh and T.N. Rao for the Appellants.

P.S. Narsimha, Ananga Bhattacharya and Avijeet Kumar Lala for M/s H

A P.S.N. & Co. for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

B The above two appeals were filed against the judgment and order dated 20.06.2003 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Appeal No. 720 of 1997 and Cross Objections, A.No. 990 of 1997 and Cross Objections and Tr. A.S. Nos. 2450 and 2451 of 1999 whereby the High Court dismissed all the appeals filed by the appellants herein and allowed the Cross Objections in part to the extent indicated in the judgment.

C

The appellants before the High Court are the defendants in O.S. Nos. 7 and 287 of 1984 filed by Krishna Bhagavan and Seetharatnam. The appellants herein also filed O.S. No. 239 of 1985 seeking a decree for perpetual injunction restraining the respondents herein and some other third parties from interfering with the plaint schedule properties. Likewise, O.S. No. 82 of 1987 was filed D by the appellants seeking a decree for perpetual injunction restraining the respondents from interfering with the plaint schedule properties. Against the dismissal of those two suits, the appellants filed C.M.A. No. 10 of 1988 on the file of the Additional District Judge who dismissed the appeal. The Principal Subordinate Judge, by her order dated 29.04.1997, passed in O.S. E Nos. 7 of 1984 and 287 of 1984 decreed the suits. The other two suits filed by the appellants for injunction were dismissed with costs. The appellants filed four appeals before the High Court which were dismissed. The cross objections filed by the respondents were allowed in part. Aggrieved against the judgment in A.S. Nos. 720 of 1997 and 990 of 1997, the above appeals were filed in this Court.

F

The facts and circumstances which led to the filing of the appeals and 4 suits may be noted in brief:-

One Pentakota Srirammurthy who is the father of the appellants herein got married with the first respondent herein Pentakota Seetharatnam in the G year 1952. The marital life with the first wife was not very happy. Srirammurthy started living with one Alla Kantamma who is divorced from her first husband as per caste custom in the year 1954. Soon after the divorce, Alla Kantamma and Srirammurthy started living as man and wife in the same village itself. Alla Kantamma was accepted as the second wife. Srirammurthy and Alla Kantamma H begot two sons - Pentakota Satyanarayana and Pentakota Prasadarao and one

daughter Villuri Susheela in the year 05.01.1956, 03.11.1958 and 17.12.1960. The second respondent Krishna Bhagavan was born on 01.01.1963. He is the youngest son of one Paramesu, who is the natural brother of Pentakota Srirammurthy. Krishna Bhagavan's father and mother died when he was aged hardly 3 years. Pentakota Srirammurthy brought him up and fostered him. The appellants' father Pentakota Srirammurthy performed the marriage of his daughter i.e., the third appellant herein on 18.02.1976 and his son, the first appellant on 12.02.1981 in a befitting manner and printed invitation cards in his own name as father which is marked as Exhibits B4 and B5. The appellants' father executed a Will regarding his properties and got it registered in the year 1980. Under the said Will, he made a provision to the first wife Seetharatnam - the first respondent herein for decent living (of an extent of 13 acres of land and house etc.) and given the rest of his properties to the appellants born through Alla Kantamma (second wife). True copy of the registered Will was marked as Exhibit B9 in the courts below and is annexed and marked as Annexure-P1. While so Seetharatnam surprisingly filed a suit O.S. No. 287 of 1984 seeking a decree for maintenance with a charge on Srirammurthy's half share in the plaint schedule property and to provide her separate residence. It was stated in the plaint that Pentakota Srirammurthy died intestate on 20.11.1985 pending the suit and that the Will is neither true nor valid nor binding on her. She also denied the execution, attestation, registration etc. It was claimed in the plaint that consequent on the death of Pentakota Srirammurthy, the right of the plaintiffs against the estate of the deceased Srirammurthy comes into effect.

A B C D E

It was further stated that if the Will set up by the defendant therein is upheld, Seetharatnam will not only get the properties which have been bequeathed in her favour under the Will but her claim for maintenance subsists against the estate of the deceased Srirammurthy in the hands of the appellants herein (Defendant Nos. 3-5). It was also stated that the second respondent Krishna Bhagavan is the adopted son of the plaintiff Seetharatnam and the first defendant Srirammurthy and the defendants and the plaintiff constituted members of Hindu Joint Family owning considerable properties mentioned in the A and B schedule to the plaint.

F G

The second respondent Krishna Bhagavan filed O.S. NO. 7 of 1984 seeking a decree for partition and separate possession of his half share in the family properties claiming for the first time as the adopted son of Seetharatnam and Srirammurthy. Srirammurthy and Seetharatnam were impleaded as defendant Nos. 1 and 2 and the appellants were added as LRs of the deceased first

H

A defendant as per order dated 12.09.1989 in I.A. 808 of 1986. It was stated in the plaint that Krishna Bhagavan was born on 01.01.1963 and that Srirammurthy and Seetharatnam requested the natural parents of Krishna Bhagavan late P. Paramesu and his wife in the year 1966 to give Krishna Bhagavan in adoption to them. Paramesu and his wife consented to the same and Krishna Bhagavan was given in adoption to Srirammurthy and Seetharatnam by his natural B parents and he was received by them and that the adoption ceremony took place in accordance with Hindu law, customs and usage and Krishna Bhagavan was being brought up by his adoptive parents. It was further submitted that a Will was executed by Srirammurthy by playing fraud with a view to bequeath the major share of the joint family properties to Alla Kantamma and her C children with a view to deprive Krishna Bhagavan and his adoptive mother Seetharatnam. It was submitted that he being the adopted son by virtue of the adoption on 05.02.1966 is entitled to a half share in the joint family properties. It was further stated that Srirammurthy died intestate on 20.11.1985 and on his death his share of the plaint schedule properties devolved upon his widow Seetharatnam and the adopted son Krishna Bhagavan and D consequently Krishna Bhagavan will be entitled to not only his half share as adopted son but also half share in the share of Srirammurthy. So in all Krishna Bhagavan will be entitled to 3/4th share in all the plaint A, B & C schedule properties in the plaint, the remaining 1/4th share belongs to Seetharatnam.

E The appellants' father Srirammurthy contested both the suits. He had filed written statement on 07.04.1984. He denied the adoption of Krishna Bhagavan. It was also stated that in the year 1954 he came into contact with one Alla Kantamma who divorced her husband Kanakaiah as per their caste custom in the year 1954 and they started living as man and wife and begot two sons and one daughter and brought them up and performed their F marriages. It was further pleaded that during the year 1980, he executed a Will in respect of his properties and got it registered. After filing the written statement, Srirammurthy died on 20.11.1985 and the appellants were brought on record as his legal representatives in O.S. Nos. 287 and 7 of 1984. That apart, the plaint in O.S. No. 287 of 1984 was amended denying the Will alleged to have been executed by deceased and claiming the deceased died intestate. G Thus she claimed absolute rights in respect of the estate of the deceased or at least 1/4th share in the plaint schedule properties. Similarly, the plaint in O.S. No. 7 of 1984 was also amended claiming 3/4th share in the plaint schedule properties. The appellants subsequently filed their written statements and denied all the allegations raised in the plaint. On behalf of the plaintiffs, H PWs 1-6 were examined and on behalf of the defendants DWs 1-8 were

examined. As already noted, Special Leave Petition Nos. 21835 and 21836 of 2003 were filed against the judgment and decree in A.S. Nos. 720 of 1997 and 990 of 1997.

We heard Mr. K.V. Viswanathan, learned counsel for the appellants and Mr. P.S. Narsimha, learned counsel for the respondents. Both the learned counsel invited our attention to the entire pleadings; evidence let in, both oral and documentary and made their meticulous submissions at length in support of their respective contentions.

Mr. K.V. Viswanathan, learned counsel for the appellants, after stating the background facts of the case, submitted that the impugned judgment and the order of the High Court is unjust and against law, weight of evidence and probabilities of the case. He submitted that the High Court and the Courts below cannot overlook Ex. B9 a registered Will when they have recorded a finding that the Will is proved as incompliance with the requirement of Section 68 of the Evidence Act, 1872 though there is no material on record to show that the Will was executed in suspicious circumstances to the satisfaction of the Court. It was further submitted that the Courts below failed to note that the evidence of DW 5 and 6 goes to show that the Will was executed by the deceased father of the appellants on his own volition without any pressure from any side. He would further submit that Respondent No. 2 Krishna Bhagavan was not a member of the family and he was not adopted. It was further submitted that Pentakota Srirammurthy was alive when the suits were filed and he filed a detailed written statement which had a vital bearing on the adjudication of the case. He denied the factum of adoption and stated that Krishna Bhagavan was the son of Pentakota Paramesu who is his elder brother and Krishna Bhagavan was never adopted but was only looked after since Krishna Bhagavan's parents died young. In para-10 of the written statement, he most importantly stated that he has executed a Will regarding his properties and got it registered in 1980 and that he made a provision to Seetharatnam for a decent living and gave the rest of the properties to the appellants herein who he claimed were his children through Alla Kantamma. It was further stated in the written statement that Krishna Bhagavan and his brothers hatched upon a plan to grab at the property and the suit was virtually a result of that concerted action. After filing the written statement in April, 1984 and before the suit came up for trial, Pentakota Srirammurthy died and as such he could not be examined. The appellants also filed written statements broadly on the same lines as filed by their father Pentakota Srirammurthy. According to Mr. K.V. Viswanathan, the crucial questions that

A arise in this case are the validity of the Will dated 20.02.1980 Ex.D9 and the genuineness of the factum of adoption. He also made submissions on the legal principles and its application to the facts of the case. According to him, the respondents have not proved that Krishna Bhagavan was adopted by Pentakota Srirammurthy and Seetharatnam and that the evidence relied upon, namely, PW1, PW3, PW6, DW2 and DW3 falls short of the required proof in B law. He took us through the evidence and pleadings and various circumstances which negate the genuineness of the adoption. On presumption of marriage due to long cohabitation, Mr. Viswanathan cited some authorities, namely, *Thakur Gokalchand* v. *Parvin Kumari,* reported in [1952] SCR 825; *Badri Prasad* v. *Dy. Director of Consolidation and Ors.,* reported in [1978] 3 SCC C 527; *S.P.S Balasubramanyam* v. *Suruttayan alias Andali Padayachi and Ors.,* reported in [1994] 1 SCC 460, *Sobha Hymavathi Devi* v. *Setti Gangadhara Swamy and Ors.,* reported in [2005] 2 SCC 244. He also cited various decisions to the effect that there is no absolute bar for interference on concurrent findings.

D Mr. P.S. Narsimha elaborately argued in support of his contentions and with reference to the pleadings, documents and evidence let in. He submitted that though the appellants filed appeals against all the suits and all the appeals were dismissed, the appellants herein filed special leave petitions before this Court only against the suits filed by the respondents which was E upheld by the High Court and no special leave petitions are filed against the dismissal of the suits filed by the appellants which were upheld by the High Court, therefore, the decrees in suits filed by the appellants have become final. According to him, the suits filed by the appellants are based on the alleged right arising out of the Will executed by Pentakota Srirammurthy and that the trial Court as well as the High Court disbelieved the Will and F dismissed the suits. It was further submitted that the appellants have not even made any submissions before the High Court that the property is not the joint family property. As there was neither a pleading, evidence, submission, finding nor any ground in appeal, the High Court correctly concluded that the properties in question are ancestral properties and there is no evidence or pleading to show that the same are the self-acquired G properties of the first defendant. Even before this Court, the appellants have not raised the plea with regard to the nature of the property being joint or self-acquired and, therefore, the learned counsel submitted that the appellants should not be permitted to raise this issue before this Court without a pleading or ground either before the High Court or before this Court. Mr. H Narsimha submitted that the Courts below have given concurrent findings on

pure question of facts. This Court would not ordinarily interfere with these findings and review the evidence for the third time unless there are exceptional circumstances justifying the departure from this normal practice. In support of this contention, he cited *Srinivas Ram Kumar* v. *Mahabir Prasad and Ors.*, [1951] SCR 277 and *M/s Tulsidas Khimji* v. *Their Workmen,* [1963] 1 SCR 675.

On the factum of adoption, Mr. Narsimha submitted that it has been the case of the plaintiff and defendant No. 2 in O.S. No. 287 of 1984 that defendant No. 2 is the adopted son of defendant No. 1 and that Seetharatnam, Srirammurthy and Krishna Bhagavan constituted a Hindu Joint Family owning the plaint schedule properties. It is also pleaded that defendant No. 1 adopted defendant No. 2 from his natural parents as per Hindu law, customs and usage and in view of t he said adoption, defendant No. 2 is entitled to his half share in the said property.

Defendant No. 2 also filed a suit for partition in O.A. No. 7 of 1984 against defendant No.1 and the plaintiff wherein he pleaded that D1 and the plaintiff adopted him from his natural parents in accordance with Hindu law, customs and usage. Mr. Narsimha submitted that the plaintiffs examined 4 witnesses to prove the factum of adoption and the witnesses deposed that D2 was adopted as per Hindu customs and all the relations of their family were present at the time of ceremony conducted in that regard. In the cross examination, she deposed that the ceremony took place 30 years ago officiated by one Kondal Rao as Purohit and that D2 was handed over by his natural parents to herself and D1 and mantras were also recited by the said Purohit during the adoption ceremony. The Headmaster of the school PW3 where D2-D5 studied deposed that the Photostat copy of the admission application form pertains to D2 which also shows the name of D1 as the father of D2 and that D1 signed in the originals of the said document in the capacity of the father D2. A Telugu Pandit of the said school also deposed that the copy of the admission application form in respect of D2 and Ex.X-12 showed D1 as the father of D2. Apart from the above-mentioned witnesses, two independent witnesses were also examined and both these witnesses deposed that the adoption took place 30 years back and were attended by other people including the relation of D1 and the plaintiff. DW2 and DW3 further deposed that adoption ceremony was officiated by Kondal Rao as Purohit and the natural parents of D2 handed over D2 to D1 and the plaintiff along with the coconut who in turn accepted the same. Thus Mr. Narsimha submitted that on a perusal of the above evidence of all the said witnesses, it can be seen that the factum of adoption of D2 by plaintiff and D2 is amply proved and that

A their evidence has been duly corroborated by the oral evidence of DW1 and DW2. Mr. Narsimha submitted that much weightage has to be given to the evidence of DW2 and DW3 as they being independent witnesses did not have any interest in either of the parties to the suits.

Mr. Narsimha then attacked the genuineness of the Will. He submitted
B that D3 and D5 (appellants) relied mostly on the Will Ex-B9 to disprove the contention of the plaintiff and D2 with regard to the adoption. It was submitted that the High Court upheld the findings arrived at by the trial Court and the concurrent findings of fact arrived at by both the Courts below are based on material evidence and based on record and does not suffer from any perversity
C so as to warrant interference under Article 136 of the Constitution of India by this Court. He also cited few decisions which held that for a valid adoption the law requires that the adoptive child should be handed over by its natural parents to the adoptive parents, who shall receive it. He also drew our attention to the relevant portions of some of the judgments of this Court in *Madhusudan Das* v. *Smt. Narayanibai and Ors.*, [1983] 1 SCC 35, *Lakshman*
D *Singh Kothari* v. *Smt. Rup Kanwar*, [1962] 1 SCR 477 and *L. Debi Prasad (Dead) by LRs.* v. *Smt. Tribeni Devi and Ors.*, [1970] 1 SCC 677.

Arguing further on the genuineness and validity of the Will, Mr. Narsimha submitted that the Will was executed in 1980 and propounded for the first time in 1997. According to him, the Will is replete with false statements, namely,
E the statement that Srirammurthy married Kantamma is false on the basis of the evidence of the appellants themselves. The statement about the paternity of the appellants is false and it is evidenced by various documents. The profounder takes active interest in getting the Will executed which give rise to a suspicious circumstance. In this case, the profounder and the beneficiaries
F themselves have arranged for the execution of the Will. They brought the attestor who is a close friend of the beneficiaries under the Will. The Will was in the custody of the profounder for 17 years before it saw the light. The factum of scribing the Will is fraught with so many contradictions that it gives rise to a very very strong suspicious circumstance and there is absolutely no commonality in the statement of these witnesses and the contradiction is
G material and goes to the route of the matter.

Mr. K.V. Viswanathan, learned counsel for the appellants made lengthy submissions by way of reply with reference to each and every contention and submissions made by learned counsel for the respondents. We shall advert
H to the same at the appropriate stage.

In the background facts and circumstances, the following questions of law arise for consideration by us:- A

1. Whether the second defendant Krishna Bhagavan is the adopted son of the first defendant Srirammurthy;

2. Whether Ex.B9 Will is valid and whether it is proved in compliance with the requirement of Section 68 of the Evidence Act; B

3. Whether the Courts below have justified in decreeing the suits in favour of the respondents herein and dismissing the appeals filed by the appellants herein merely basing on surmises and conjectures and wrong application of law? C

We have carefully perused the complaint in O.S. No. 7 of 1984 and O.S. No. 287 of 1984 and the written statement filed by the respective defendants. We have also carefully perused the Will marked as Ex.B9 and executed on 20.02.1980. We have perused all the original documents and the evidence recorded by the courts from the original records summoned by us from the High Court and the lower Court. D

We have to bear in mind that P. Srirammurthy married P. Seetharatnam in 1951. According to him, soon after the marriage since he did not derive marital pleasure with respondent No. 1, he started living with one A. Kantamma and got 3 children i.e. the appellants herein on 05.01.1956, 03.11.1958 and 17.12.1960. The birth of these children through P. Srirammurthy is denied by respondent Nos. 1 and 2. Their case is that the appellants were born to A. Kantamma through her husband A. Kanakaiah. According to respondent Nos. 1 and 2, since P. Srirammurthy and Seetharatnam were issueless they adopted Krishna Bhagavan, respondent No. 2. Their further case is that the properties of P. Srirammurthy are ancestral and Krishna Bhagavan has half share in the same and after the death of P. Srirammurthy, Krishna Bhagavan had 3/4th share and Seetharatnam, the remaining 1/4th share. In January, 1984, O.A. No. 7 of 1984 was filed by the second respondent - Krishna Bhagavan against Srirammurthy and the appellants herein as well as Seetharatnam claiming partition and possession. In February, 1984 Seetharatnam filed O.S. No. 287 of 1984 claiming maintenance against Srirammurthy. In both the suits, the theory of adoption of Krishna Bhagavan was set up. Srirammurthy died on 20.11.1985 and the suits were amended while Seetharatnam claimed additional partition and sought 1/4th share that the remaining share to go to Krishna Bhagavan. Krishna Bhagavan amended his plaint seeking partition in the same ratio. Both prayed for possession and *mesne* profits. It is pertinent to E F G H

notice that when the suits were filed Srirammurthy was alive and filed a detailed written statement which has a vital bearing for the adjudication of this case. He specifically denied the factum of adoption and stated that Krishna Bhagavan was the son of his elder brother P. Paramesu and that Krishna Bhagavan was never adopted but was only looked after since Krishna Bhagavan's parents died young. Most importantly, he submitted that he executed a Will regarding his property and got it registered in 1980. After filing the written statement and before the suit came up for trial, Srirammurthy died and as such he could not be examined.

The trial Court framed necessary issues in regard to the validity of the registered Will, validity of the adoption and whether Krishna Bhagavan was entitled to any share in the suit property and to what extent.

The appellants also filed written statement broadly on the same lines as signed by their father Srirammurthy. The suit filed by Seetharatnam in O.S. No. 287 of 1984 was treated as main suit. Before the trial Court, 6 witnesses were examined on the side of the respondents and 8 witnesses were examined on the side of the appellants. P. Seetharatnam examined herself as PW1, Krishna Bhagavan examined himself as DW1. P. Satyanarayana, Manka Anandarao (attestor of the Will) and Kamisetti Saibaba, the scribe of the Will were examined on the side of the appellants. With regard to the adoption of Krishna Bhagavan apart from PW1, PW3, PW6, DW2, DW3 spoke through their evidence, their depositions would be referred to at the appropriate place. If the Will is held to be proved and the adoption is held to be not proved, then irrespective of the paternity the appellant should succeed since they are legatees under the will. Hence, the crucial question that arises in this case is the validity of the Will dated 20.02.1980 and the genuineness of the factum of adoption. The trial Court decreed both the suits filed by Krishna Bhagavan and Seetharatnam respectively. The appellants filed appeals to the High Court and the respondents filed cross objections on the *mesne* profits issue. The High Court dismissed all the appeals of the appellants and allowed the cross objections of the respondents.

We have perused the original Will Ex.B9 which was written in Telugu and the translated copy which has been filed before us. The Telugu version of the document was explained to me by my Sr. Personal Assistant - Mr. R. Natarajan who knows Telugu very well. With his help, I perused the endorsements. The Will was registered on 20.02.1980. The signature of Srirammurthy was identified by Vanka Aanantha Rao and Kameswara Rao.

The sub-registrar has signed the document. The registration endorsement is also made at page no. 2 of the document. On page 3 bottom, Srirammurthy has made his signature and his signature was witnessed by Vanka Anantha Rao and T. Samba Murthy. The document was prepared by Kamisetti Saibaba. His signature and the rubber stamp are at the bottom of page no. 3. As far as Ex.B9 Will is concerned, the appellants being the profounder, the initial onus will be on them to prove execution of the Will. Thereafter, the onus would shift to the respondents. They have to establish their case of undue influence or coercion. Then the onus would shift to the appellants to remove the suspicious circumstances if any. Our attention was drawn to the findings of the High Court which clearly holds the Will be duly proved and that the testator was in sound disposing state of mind. However, the Courts below have assumed certain non-existent circumstances and have held the Will as not proved. It is not in dispute that on the date of the will, as has been pleaded in the written statement of P. Srirammurthy, the properties were absolute properties of P. Srirammurthy and he had absolute right to Will it away. Under the Will, P. Seetharatnam has been given a large extent of property. The appellants are entitled to the property as legatees along with P. Seetharatnam who is entitled to her share under the Will. It is primarily submitted that the Will is proved and the adoption is not proved. We shall now see the circumstances under which the Will is proved. In the instant case, the Will has been duly proved and the High Court and the lower Court in their discussion has even held so. It has also been held that the testator was hale and healthy and in a sound state of mind. The Will is a registered Will. DW5, the attestor and DW6, the scribe have been examined to prove the Will. As already noticed, the Will gives property to respondent No. 1 Seetharatnam, the first wife of the testator and the remaining properties to the appellants, who according to the testator, were his children and the children through his second wife A. Kantamma. We have already referred to the written statement filed by Srirammurthy in the suit. The statement made by him in the written statement is one of the most important factors which authenticates the genuineness of the Will. No evidence has been led in by the respondents to show the exercise of any fraud or undue influence at the time of execution of the Will. No evidence was adduced to show that the testator is not in sound state of mind and in fact, the finding is that he was of sound mind. In our opinion, the evidence adduced by the appellants/ profounders are sufficient to satisfy the conscience of the Court of law that the Will was duly executed by the testator. The trial Court has reached certain findings with regard to the suspicious circumstances. They are a) the exclusion of Krishna Bhagavan from the Will and bequethal of major portion in favour

A B C D E F G H

A of the appellants; b) the appellants are not the children of the testator and the properties are ancestral properties; c) there was contradiction between evidence of DW5 attestor and DW6 Scribe with regard to the presence of DW4 and the husband of DW5. d) there is no evidence to state that the recitals to draft the Will are based on instructions given by Srirammurthy. e) the Will had incorrect recitals about Alla Kantamma being the wife of
B Srirammurthy and the appellants being the children of Srirammurthy.

The above findings, in our opinion, are erroneous. The trial Court also recorded wrongly a finding that the Will was not revocable overlooking the fact that in the very paragraph the testator reserved his right to cancel the
C Will and execute another Will. In our view, the findings of the High Court and the trial Court are not only contrary to the facts on record but also overlooked the law governing the aspects of proof of Will. Section 68 of the Indian Evidence Act, 1872 deals with proof of execution of document required by law to be attested. This section lays down that if the deed sought to be proved is a document required by law to be attested and if there be an attesting
D witness alive and subject to process of the Court and capable of giving evidence, he must be called to prove execution. Execution consists in signing a document written out, read over and understood and to go through the formalities necessary for the validity of legal act. Section 63 of the Indian Succession Act gives meaning of attestation as under:-

E

> *"Section 63: Execution of unprivileged will.*- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, (or an airman so employed or engaged) or a mariner at sea, shall execute his will according to the following rules:
>
> (a) The testator shall sign or shall affix his mark to the will, or it shall
F be signed by some other person in his presence and by his direction.
>
> (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as will.
>
G
> (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the
H signature of such other person; and each of the witnesses shall

sign the will in the presence of the testator; but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary." A

It is clear from the definition that the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other persons sign the instrument in the presence B and by the direction of the executant. The witness should further state that each of the attesting witnesses singed the instrument in the presence of the executant. These are the ingredients of attestation and they have to be proved by the witnesses. The word 'execution' in Section 68 includes attestation as required by law. C

A perusal of Ex.B9 (in original) would show that the signatures of the Registering Officer and of the identifying witnesses affixed to the registration endorsement were, in our opinion, sufficient attestation within the meaning of the Act. The endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the D original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also taken in the document. After all this, the sub-registrar signed the deed. Unlike other documents the Will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his Will or not and this aspect E naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and the testament of departed testator.

In the instant case, the propounders were called upon to show by satisfactory evidence that the Will was signed by the testator, that the F testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document on his own freewill. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated above. It was argued by learned counsel for the respondent that G propounders themselves took a prominent part in the execution of the Will which confer on them substantial benefits. In the instant case, the propounders who were required to remove the said suspicion have let in clear and satisfactory evidence. In the instant case, there was unequivocal admission of the Will in the written statement filed by P. Srirammurthy. In his written statement, he has specifically averred that he had executed the Will and also H

A described the appellants as his sons and Alla Kantamma as his wife as the admission was found in the pleadings. The case of the appellants cannot be thrown out. As already noticed, the first defendant has specifically pleaded that he had executed a Will in the year 1980 and such admissions cannot be easily brushed aside. However, the testator could not be examined as he was not alive at the time of trial. All the witnesses deposed that they had signed B as identifying witnesses and that the testator was in sound disposition of mind. Thus, in our opinion, the appellants have discharged their burden and established that the Will in question was executed by Srirammurthy and Ex.B9 was his last will. It is true that registration of the Will does not dispense with the need of proving, execution and attestation of a document which is required C by law to be proved in the manner as provided in Section 68 of the Evidence Act. The Registrar has made the following particulars on Ex.B9 which was admitted to registration, namely, the date, hour and place of presentation of document for registration, the signature of the person admitting the execution of the Will and the signature of the identifying witnesses. The document also contains the signatures of the attesting witnesses and the scribe. Such D particulars are required to be endorsed by the Registrar along with his signature and date of document. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the endorsement of registration were regularly and duly performed and are correctly recorded. In our opinion, the burden of proof to prove the Will has been duly E and satisfactorily discharged by the appellants. The onus is discharged by the propounder adducing *prima facie* evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. In such circumstances, the onus shift to the contestant opposing the Will to bring material on record meeting such *prima facie* case in which event the onus shift back on the propounder to satisfy the court affirmatively that the F testator did know well the contents of the Will and in sound disposing capacity executed the same.

It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has G been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in *Sridevi and Ors.* v. *Jayaraja Shetty and* H *Ors.*, [2005] 2 SCC 784. In the said case, it has been held that the onus to

prove 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 proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case.

Mr. Narsimha, learned counsel for the respondents, submitted that the natural heirs were excluded and legally wedded wife was given a lesser share and, therefore, it has to be held to be a suspicious circumstance. We are unable to countenance the said submission. The circumstances of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of the will is to be interfered in the normal line of succession and so natural heirs would be debarred in every case of the Will. It may be that in some cases they are fully debarred and some cases partly. This is the view taken by this Court in *Uma Devi Nambiar and Ors.* v. *T.C. Sidhan (Dead),* [2004] 2 SCC 321.

We have already referred to the findings of the High Court and the trial Court about the alleged suspicious circumstances which, in our opinion, are palpably erroneous. In fact, the circumstances are not suspicious at all. As far as the High Court is concerned, it has only gone by the exclusion of Krishna Bhagavan in the Will and the bequethal of major portion to the appellant. This is legally no ground to negate the Will. Further, once the Will is duly proved, the Will has to be given effect to. In this case, admittedly and even according to PW1 the testator Srirammurthy and Alla Kantamma were living together as man and wife. Therefore, there is nothing wrong if the will refers to Alla Kantamma as wife of the testator. Similarly, the testator has referred to the appellants as his children in the Will. The very same stand has been maintained in the written statement filed by Srirammurthy. There is ample evidence to prove that Srirammurthy has treated the appellants as his children and solemnized their marriages. DW-4's evidence prove this factor. It is everybody's case that the testator and Alla Kantamma lived together and the appellants were also living with them. Ex.B8 voters list had shown them as children of the testator. DW4 has deposed that DW5's wedding (appellant No. 3) was celebrated by printing invitation cards by the testator. DW7 says the testator and Kantamma performed first appellant's marriage. Further, DW-4 (appellant No. 1) has said only because testator was having a Government job as village Munsiff, he did not disclose in the official record that the

A appellants are his children. In this background, there is nothing wrong if the testator described the appellants as his children particularly when the same stand was taken in his written statement also. Further, the stand of the testator in the written statement was that the properties are absolute properties and Krishna Bhagavan had no share once the adoption is not proved. The testator would be the sole surviving coparcener and the property would be
B his absolute property. On the contrary, there is denial. There is no admission that the joint family consisted of the testator, Seetharatnam and Krishna Bhagavan and, therefore, there cannot be any doubt over the testator's capacity to bequeath.

C Mr. Narsimha, learned counsel for the respondents, pointed out certain contradiction in the evidence of DW5, DW6 and DW4. DW5 testator stated that the testator came to his house and requested him to come to the Registrar Office. The Testator sent word to Samba Murthy, the other attestor who came to the house of DW5. the testator and the attestors went to Taluk Office and contacted DW6 Scribe. DW5 also stated that in the document writer's shed
D the Will was scribed as per the instruction given by D1. He stated a draft Will was prepared first as per the instructions given by D1. He stated that D1 went through the said draft and thereafter a fair Will was prepared. He stated that thereafter they went to the Sub-Registrar Office and along with him another witness acted as an identifying witness, whom he does not know. Thereafter,
E in cross-examination he says the testator sent word to Sambamurthy through one of his men and he states that testator contacted Saibaba and added "DW4 has not accompanied D1 at that time". He also stated that he has not seen either petitioner No. 2 or petitioner No. 3 and Narayana Rao with D1 at that time.

F DW6 stated that D1 brought the draft Will and asked him to scribe the same. This is nowhere contradicted by DW5. DW5 does not say that D1 (testator) did not bring a draft Will. It is quite natural for the testator to have a first draft Will in the pocket when he goes to a document writer. DW5 was asked to attest. DW6 also speaks about the execution and attestation. The trial Court has made much about the draft Will aspect. This is hardly a
G suspicious circumstance. DW6 says that 4 male persons accompanied D1. This is hardly a suspicious circumstance. DW5 also states that there was another person whom he would not identify. The deposition was given in 1997 (i.e. 17 years after the registration of Will) and the courts below ought not to have made a mountain out of a molehill and on that basis reject a duly
H executed registered Will.

Coming to the evidence of DW4 (Appellant No. 1) his evidence is that testator alone went to execute the Will. He also states that he also went there and he does not know whether his mother and brother accompanied him. He says that he has not seen the writing of the Will and he was not present at the time of registration. He also says that he did not go to the place where the document was scribed. Applying the law as set out above and assuming the worst against the appellants, no case of undue influence, coercion or fraud is made out to negate the Will. The mere presence of DW4 (appellant no. 1) would not make it a suspicious circumstance. Assuming the presence to be true that does not mean undue influence was exercised and mere presence does not mean that a prominent part was played. Hence the Will has been duly proved by the appellants.

Mr. Narsimha advanced much argument about the school extracts marked as Ex.A6-A8, X6-X11 and X15-X20. According to him, these documents no where show D1 Srirammurthy as the father of the appellants. We have perused Ex. X series and A5-A9 series. We have perused A5-A9 in original and X series (Xerox copies). Ex.A5-A9 series were issued by the Headmaster of the school on 23.09.1996. It is seen from Ex.A5, Krishna Bhagavan was admitted on 01.02.1968 and he left the school on 15.06.1974. It is seen from Ex.A7, Prasadarao was admitted on 11.08.1964 and he left the school on 31.05.1970. Ex.A8, Suseela was admitted on 20.07.1965 and she left the school on 30.08.1973. All these documents are true copies and were issued by the Headmaster on 23.09.1996.

In the counter affidavit filed in this Court on behalf of respondent Nos. 1 and 2, the respondents once again have taken shelter under wild assumption that name of the father of the appellants was mentioned as one Arala Kanakaiah in the Ex.A6-A8. This clearly shows and proves the conduct of the respondents in misleading the Court while Ex.A6-A8 reads something else as could be seen from para 31 of the trial Court judgment. As can be seen from Ex.A6, third appellant was born on 08.02.1955 and was admitted in the school on 10.06.1960. The Headmaster of Mandal Parishad, Elementary School was examined on 22.01.1997. According to him, he joined the school 5 years before. He produced the documents along with the Photostat copies for relevant entries. Even though originals of all the documents were available, only Photostat copies of the documents were put to the witnesses. The Headmaster also deposed that he has no personal knowledge of these documents. D7 (who is aged 70 years) has deposed that D2-D5 are the children of Kantamma born through the first defendant and he gave information regarding the birth of second

A defendant to the government officials and he gave information to the effect that Alla Kanakaiah was the father of D3. He further deposed that he gave such information as D1 was fearing that he would lose his job. He also deposed about the marriage performed by D1 and Kantamma. In cross-examination, he stated that Alla Kanakaiah is the first husband of Kantamma and that D7. He also spoke about the caste divorce between Kanakaiah and
B Kantamma. Ex.B8 voters list has shown the appellant as children of the testator D1. DW4 has said only because testator D1 was having a government job as Village Munsiff. He did not disclose in the official record that the appellants are his children. In this background, there is nothing wrong if the testator describes the appellants as his children particularly when the same
C stand is taken in his written statement also. In our opinion, Ex. A5-A9 and X series cannot at all be looked into for any purpose and that the same would have been procured by the respondents to put forth their case.

The Will is held to be proved and adoption is held to be not proved. The appellants should succeed since they are the legatees under the Will. We
D also hold that P. Seetharatnam is also entitled to the properties given to her under Ex.B9.

Therefore, we are of the firm opinion that the Will is a genuine document and has been duly proved by the appellants. The said issue is answered accordingly.

E

ADOPTION:

We have already referred to the arguments advanced by both sides on adoption. Our attention was drawn to the findings recorded by the trial Court and by the High Court on this aspect and the relevant portion of the oral and
F documentary evidence was also relied on by both sides. The evidence relied upon is that of PWs1, 3 and 6, DW2 and DW3. Their evidence, in our opinion, falls short of the required proof in law. The respondents, in our view, have a heavy onus to discharge the burden lies on them to prove the factum of adoption. Krishna Bhagavan, the respondent herein seeks to exclude the
G natural line of succession to the property by alleging adoption. The instant case is a classic example where the alleged adoptive father himself filed a written statement denying adoption. This apart, the following circumstances negate the genuineness of the adoption. This Court in the case of *Rahasa Pandiani (Dead) by LRs and Ors.* v. *Gokulananda Panda and Ors.*, [1987] 2 SCC 338 held as under:-

H

"An adoption would divert the normal and natural course of succession. Therefore the court has to be extremely alert and vigilant to guard against being enshared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the Will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is claimed on the basis of oral evidence and is not supported by a registered document or any other evidence of a clinching nature, if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the court by the party contending that there was such an adoption. (para 4)" A B C

This Court held in *Kishori Lal* v. *Mt. Chaltibai,* AIR (1959) SC 504. We can do no better than to quote the relevant passage from the above judgment which reads as under:-

"As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance. The importance of accounts was emphasised by the Privy Council in *Sootrugun* v. *Sabitra*; in *Diwakar Rao* v. *Chandanlal Rao* and in *Kishorilal* v. *Chunilal;* in *Lal Kumar* v. *Charanji Lal* and in *Padamla* v. *Fakira Debya.*" D E

No argument was advanced on the question of paternity. We are not, therefore, dealing with the said question. F

Admittedly, Srirammurthy was living with Alla Kantamma since 1954. The alleged adoption is in 1966. It is quite unbelievable that a person who is estranged from his wife and according to him 3 children were born to him and Alla Kantamma in the years 05.01.1956, 03.11.1958 and 17.12.1960 joining with Seetharatnam. The pleading itself shows the hatred they had for each other due to Kantamma coming into the picture. No date of adoption is given nor venue of the ceremony was given in the plaint. No specific custom is pleaded and it is not even pleaded that giving of coconut is part of the ceremony. Seetharatnam has not given the place or year in which the adoption G H

A took place. She only states that she does not remember her age or the year in which adoption took place. She also says no muhurtham was fixed. For Hindus, fixing of muhurtham or auspicious time is a very important event even for the smallest of functions and it is unbelievable that no muhurtham was fixed. The plaint also is bereft of details which is essential for proving the adoption. PW6 stated that he does not remember the date or year of adoption.
B No adoption deed was executed for such an important event. DW2 says that about 100 persons attended the ceremony whereas DW3 says that about 400-500 persons have attended. It is surprising that for such a big ceremony no invitation cards were printed. In the suit filed by Seetharatnam in her plaint and in the deposition she has averred that in the year 1977-78, she protested
C her husband's attitude and raised dispute for maintenance and after the intervention of elders, 4-5 persons, her husband agreed to pay her maintenance as she claimed. Even then she does not claim maintenance for her adopted son. Further, she has not stated that the adopted son was living with her.

Krishna Bhagavan, in his evidence, has stated that in 1978 he was in
D Xth standard and that point of time his father neglected him and was not providing him the necessary fund for his studies. If at all the adopted son was living with Sitaratnam and if at all the adoption is true, then she would have naturally claimed maintenance for his adopted son also or filed a suit then.

E None of the witnesses have deposed the date of the alleged adoption function. All the witnesses have deposed in a parrot like manner stating that, the parties sat in a plank and a coconut was given to Pentakota Srirammurthy and Sitaratnam along with the child.

F Further two witnesses Kanakayya and Venkatarao who were alive and who allegedly attended adoption ceremony have not been examined.

Exhibit B7 (proceedings in O.S. No. 69/82) and Ex.B6 (suit extract) are relevant. This is a suit filed by the sister of Paramesu, where Krishna Bhagavan was arrayed as one of the parties in that suit. In that suit, Krishna Bhagavan
G was shown as son of Paramesu represented by his brother and sister. The plaintiff in that suit has filed affidavit showing Krishna Bhagavan as son of Paramesu. Even in that suit, Pentakota Srirammurthy has deposed and described Krishna Bhagavan as his brother's son. When this was put to the Krishna Bhagavan in cross-examination he only pleaded ignorance.

H In the above suit, Sitaratnam filed an application seeking for discharging

the Court guardian and for appointing her as guardian for Krishna Bhagavan. In the affidavit in support of the application, she did not describe Krishna Bhagavan as her adopted son. This was in the year 1982. When this was put in cross to Seetharatnam, she did not deny but pleaded ignorance.

Sriramamurthy declared his properties in LCC 428/Tuni/75. In that proceeding, Sriramamurthy deposed as witnesses and described Krishna Bhagavan as his brother's son. Krishna Bhagavan's name was shown as part of the family of Paramesu in their land ceiling declarations.

PW3 has deposed to the effect that Ex.X 3 is the photocopy of the admission application pertaining to Krishna Bhagavan. Sriramamurthy himself signed in the place meant for Father or guardian. Hence, it cannot be contended that this a proof of adoption. It was a printed column for father or guardian. He could have meant to be a guardian as he did for all his elder brother's children. Further DW1 Krishna Bhagavan is shown as guardian for his natural sisters and brothers. PW4 has stated that in EX. X12 admissions pertaining to Krishna Bhagwan where Sriramamurthy was shown as father or guardian of D2. This is also a printed format.

PW4 has stated that EX. X28 is the copy of the admission application of P. Bhaskara Satyanarayana who is the son of Paramesu, Sriramamurthy has signed the same in the capacity of guardian. Further in Ex.31 Sriramamurthy signed in the admission form of Uma as guardian.

We, therefore, hold that the alleged adoption is not true and valid and the alleged adopted son has no right in the suit property and *mesne* profits. It is now proved beyond doubt that the suit property is to belong to the appellants. Therefore, the question of paying the *mesne* profits does not arise. Since we now allow the appeals, *mesne* profits are due from the respondents. The appellants are at liberty to claim the *mesne* profits and recover the same from the respondents herein.

In the result, we hold that the Will Ex.B9 is a true and genuine document and the appellants and Seetharatnam will be entitled to the properties respectively allotted to them under the said Will. We also hold that the alleged adoption is not true and, therefore, the alleged adopted son Krishna Bhagavan has no right or any interest in any of the suit properties. In view of the fact that P. Seetharatnam has been given some properties under the Will under Section 22 of the Hindu Adoption and Maintenance Act, she is not entitled to any maintenance.

A The appeals stand allowed. The judgments and decrees of the High Court and the lower Courts are set aside. Even though this is eminently a fit case to order costs, we refrain from ordering costs considering the relationship of the parties.

B V.M. Appeals allowed.