A SRIDEVI AND ORS.

v.

JAYARAJA SHETTY AND ORS.

JANUARY 28, 2005

B [ASHOK BHAN AND A.K. MATHUR, JJ.]

Succession Act, 1925—Section 63—Will—Execution of—Onus to prove due execution lies on propounder—Once propounder shows that the testator in sound disposing mind signed the Will of his own free will, onus to prove undue influence, fraud, coercion shifts to the person alleging it—On facts, testator executed the Will bequeathing certain properties in favour of respondents—Appellants claiming share in the property on the ground that Will was not duly executed—Trial court and High Court dismissing the claim upholding the validity of Will—On appeal, held, in the absence of suspicious circumstances surrounding the execution of Will, and the statement of attesting witnesses and scribe as to sound disposing mind of testator while signing Will, respondents are discharged from burden of proving the due execution of Will—Presence of son in the house at the time of execution of Will itself does not prove that he took prominent part in execution of Will—Delay in registration of Will explained—Thus, Will duly executed.

One 'P' father of 4 sons and 3 daughters executed a Will bequeathing certain movable and immovable properties to his sons 'D' and 'R'. Appellant 1 and 2, daughters of P and appellant 3, granddaughter from his third daughter filed suit claiming 1/7th share each in the properties as natural heirs. Respondent nos.1-7 in their written statement admitted the contents of plaint. The suit was contested by the grandchildren (children of his 3 sons) and 'D' son of P. In the plaint, there was no mention about the Will as according to the appellants, it was not brought to their notice prior to filing of written statement. Trial court dismissed the suit holding that Will executed by 'P' was genuine and valid and the bequeathed properties were not amenable to partition. High Court upheld the order of trial court. Hence the present appeal.

Appellants contended that the Will propounded by the respondents was not a duly executed Will; that burden to prove due execution of the

Will was on the propounders of the Will which they have failed to discharge; that the Will was surrounded by suspicious circumstances as the testator died within 15 days of the execution of the Will and that he did not have the testamentary capacity to execute the Will; that respondent No. 13 (son of P) had taken a prominent part in the execution of the Will as he was present in the house at the time of the alleged execution of the Will; that the respondents had failed to disclose the execution of the Will in any of the earlier proceedings before the revenue authorities and the forest authorities which were contested between the appellants and Respondent Nos. 8-13 and that the Will was got registered after a lapse of 4 years and did not see the light of the day till it was produced in the present proceedings after a lapse of more than 6 years. A B C

Respondent Nos. 8-13, the grand children contended that the due execution of the Will had been proved by the testimony of the scribe and the two attesting witnesses coupled with the testimony of the hand-writing expert, who have categorically stated that the Will had been executed in their presence and the testator signed the same while in sound disposing mind and in possession of full physical and mental faculties; that need to register the Will after a lapse of 4 years arose as per the legal advice given to them; that the Will had been disclosed to the respondents at the time of final obeisance ceremony of the testator in 1976, and then in 1978 in the proceedings before the forest authorities and that the Will was disclosed to the entire world at the time of its registration in 1980. D E

Dismissing the appeal, the court

HELD: 1.1. The mode of proving the Will does not differ from that of proving any other document except as to special requirement of attestation prescribed in case of a Will by Section 63 of Indian Succession Act, 1925. 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 proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the Will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. The F G H

A propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing mind; that he understood the nature and effect of dispositions and had put the signatures to the testament of his own free will and that he had signed it in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. [869-E-G; 870-D]

B

H. Venkatachala Iyengar v. *B.N. Thimmajamma and Ors.*, [1959] Supp. 1 SCR 426; *Ramachandra Ramabux.* v. *Champabai and Ors.*, [1964] 6 SCR 814; *Surendra Pal and Ors.* v. *Dr. (Mrs.) Saraswati Arora and Anr.*, [1974] 2 SCC 600; *Smt. Jaswant Kaur* v. *Smt. Amrit Kaur and Ors.*, [1977] 1 SCC 369 and *Meenakshiammal (Dead) thr. LRs and Ors.* v. *Chandrasekaran and Anr.*, [2005] 1 SCC 280, relied on.

C

1.2. The two attesting witnesses and the scribe have categorically stated that testator 'P' was in sound state of health and possessed his full physical and mental faculties. Except that P was 80 years of age and died D within 15 days of the execution of the Will, nothing has been brought on record to show that he was not in good health or possessed of his physical or mental faculties. From the cross-examination of the scribe and the two attesting witnesses, the appellants have failed to bring out anything which could have put a doubt regarding his physical or mental incapacity to execute the Will. The family properties had been partitioned in the year E 1961. The shares which were given to sons D and R were in possession of tenants and vested in the State Government whereas the properties which had been given to the daughters were in the personal cultivation of the family. The testator while executing the Will bequeathed the properties which had fallen to his share in the partition and which he had inherited F from his brother which were in his personal cultivation in favour of his two sons D and R and gave the right to receive compensation to other heirs of the properties which were under the tenants and had vested in the State Government. It is not a case where the father had deprived his other children totally from inheritance. Reasons for unequal distribution have been given in the Will itself. This had been done by him to balance the G equitable distribution of the properties in favour of all his children.

[871-A-B, C-E]

2. Mere presence of Respondent 13 in the house would not prove that he had taken prominent part in the execution of the Will. Moreover, both the attesting witnesses have also stated that the daughters were also present

H

in the house at the time of execution of the Will. The presence of the daughters in the house at the time of execution of the Will itself dispels any doubt about the so-called role, which Respondent No. 13 had played in the execution of the Will. [871-G] A

3. The case of the respondents is that the Will was disclosed in the year 1978 as well during the proceedings pending before the forest authorities. Respondent No. 13 had moved an application before the forest authorities for permission to cut the trees standing on the land which had come to his share under the Will. It was contested by the appellants. A settlement was arrived at wherein three daughters had stated that after the death of their father, they did not have any objection for the grant of general certificate authorizing Respondent No. 13 to cut the trees. From this it can be safely presumed that the statement that they did not have any right in the land was made by them only after knowing the contents of the Will. Both the attesting witnesses have stated that the daughters were present at the time of the execution of the Will. This assertion of the two attesting witnesses has not been controverted by either of the daughters by appearing in the witness box. From their presence in the house at the time of the execution of the Will, it can reasonably be inferred that they had knowledge about the execution of the Will. [872-E, F, G-H] B C D

4. At the time of registration of the Will in 1980, the scribe and the two attesting witnesses had been produced before the Registrar. Their statements were recorded and only after satisfying himself, the Registrar registered the Will. The statements of the scribe and the two attesting witnesses before the Registrar are in harmony with the statements made by them in the court. Since the daughters were present at the time of execution of the Will by the testator and the execution of the same was disclosed at the time of final obeisance ceremony of the testator and that the Will had also been brought to the notice of the appellants in the year 1978 during the proceedings before the forest authorities, the registration of the Will in the year 1980 by itself does not cast a doubt regarding the execution of the Will in the year 1976. [873-B, D] E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3749 of 1999.

From the Judgment and Order dated 9.1.98 of the Karnataka High Court in R.F.A. No. 715 of 1988.

Sanjay Parikh, Naveen R. Nath, Mrs. Lalit Mohini Bhat, Ms.Anitha H

A Shenoy and Ms. Hetu Arora for the Appellant.

Dr. Rajeev Dhavan, S.N. Bhat, N.P.S. Panwar and D.P. Chaturvedi for the Respondents.

The Judgment of the Court was delivered :

B

Plaintiffs who are the appellants have filed this appeal assailing the judgment and decree passed by the High Court of Karnataka in Regular First Appeal No. 715 of 1988 to the extent it has gone against them. By the impugned judgment, the High Court has affirmed the judgment and decree passed by the Trial Court.

C

Facts :

One Padmayya Kambali was the owner of the disputed suit properties. He had four sons and three daughters. Appellant Nos. 1 & 2 are the daughters and appellant No. 3 is the granddaughter through the third daughter who has D died. Defendant-respondent Nos. 1 to 12 are the grandchildren of Padmayya Kambali through his three sons and 13th Respondent is his 4th son. Padmayya Kambali died on 13.4.1976. At the time of his death he left behind vast properties some of which he had inherited from his brother and includes properties which vested in the State of Karnataka in respect of which E compensation was paid. He executed a will dated 28.3.1976 (Exhibit D-1) which was got registered on 11.9.1980

Appellants filed the suit being Original Suit No. 5 of 1981 for partition and separate possession of 1/7th share for each of the appellants of the properties described in the Schedules 'A', 'B', 'C' and 'D' attached to the F plaint. Schedule properties 'A', 'B' and 'C' are immovable properties whereas 'D' schedule properties are movable properties. It was alleged in the plaint that the suit properties are the Joint Hindu Family properties and the appellants being the natural heirs are entitled to 1/7th share each in the suit properties. It was also averred that respondents were enjoying the properties to the exclusion of the appellants and were not willing to partition the properties or G come to a reasonable or amicable settlement. Nothing has been stated about the will in the plaint as according to them it had not been brought to their notice prior to the filing of the written statement. Respondent Nos. 1-7 in their written statement admitted the contents of the plaint. Respondent Nos. 8-12, wife and children of Darmaraja Kadamba (a pre-deceased son of the H testator), and Respondent No. 13 - Raviraja Kadamba contested the suit.

According to them, there was a partition in the family under a Registered Partition Deed (Exhibit D-4) dated 4.1.1961. Under the said partition, the female members were allotted major shares in the properties which were in personal cultivation and enjoyment of the family whereas Dharmaraja Kadamba (deceased) - husband & father of Respondent Nos. 8 to 12 and Raviraja Kadamba - Respondent No. 13, were allotted properties which were in possession of the tenants. After the coming into force of the Karnataka Land Reforms (Amendment) Act, 1973, Act 1 of 974, all tenanted lands vested in the Government and the two sons were left with no properties. In order to correct the injustice done to these two sons, Padmayya Kambali bequeathed schedule properties 'A' and 'B' (which were not under the tenants) in their favour and the daughters i.e. the appellants were given the right to receive compensation in lieu of the lands which were with the tenants and had vested in the Government under the Land Reforms Act. It was averred that Padmayya Kambali executed the will of his own while in sound disposing mind. At the time of execution of the will, he was in possession of his physical and mental faculties. It was averred that except the properties which are the subject matter of this appeal and are shown in schedule 'A' and 'B' to the will, other properties were amenable to partition. Insofar as immovable properties are concerned, they were divided amongst the heirs soonafter the death of Padmayya Kambali. It was also averred that the contents of the will executed by the testator were disclosed at the time of final obeisance ceremony of Padmayya Kambali in the year 1976.

The Trial Court framed relevant issues. Appellants examined PWs. 1 to 4 and got marked Exhibits P-1 to P-15. The respondents examined 5 witnesses which included Respondent No. 13 - himself, Scribe and two attesting witnesses of the will, hand-writing expert and got marked documents Exhibits D-1 to D-5.

The Trial Court after considering the entire material and evidence on record found that the will executed by Padmayya Kambali was genuine and valid. It was held that the schedule properties Schedule 'A' and 'B' bequeathed in favour of his two sons viz. Dharmaraja Kadamba and Raviraja Kadamba under the will are not amenable to partition. Regarding the other properties the suit was decreed. There is no dispute regarding the properties in respect of which the suit has been decreed.

Assailing the findings of the Trial Court that the will is genuine and valid, the appellants filed First Appeal in the High Court. It was alleged in

A the memo of appeal that the execution of the will has not been proved in accordance with law and that there were suspicious circumstances surrounding the will which the propounder of the will failed to dispel by leading cogent and acceptable evidence.

The High Court after re-examining the entire evidence present on the B record held that the scribe in his testimony had vividly stated that the will was drafted on the dictation of the testator as per his desire. The two attesting witnesses had stated that the will was read to the testator and the testator, after understanding the contents thereof, signed the same. The testator signed the will in their presence and they had signed the will as attesting witnesses C in his presence. Hand-writing expert produced by Respondent Nos. 8-13 corroborated the testimony of the scribe and the two attesting witnesses. He compared the signatures of the testator on the will (at 6 places) with his admitted signatures and in his opinion the signatures appending to the will were that of the testator.

D Accordingly, the appeal was dismissed aggrieved against which the present appeal has been filed.

Counsel for the parties addressed arguments on Issue No. 4 only, which is to the following effect :

E *"Whether the Will dated 28.3.1976 executed by Late Padmaraja Kambali set up by the defendants 8 to 13 is true and valid and executed by late Padmaraja Kambali in sound and disposing state of mind?"*

Shri Sanjay Parikh, learned advocate appearing for the appellants F strenuously contended that the will propounded by the respondents was not a duly executed will. According to him, the burden to prove due execution of the will was on the propounders of the will which they have failed to discharge. That the will was surrounded by suspicious circumstances. The burden to remove the suspicion on the due execution of the will was also on the propounders which they have failed to discharge. According to him, the G testator died within 15 days of the execution of the will and that he did not have the testamentary capacity to execute the will. Respondent No. 13 had taken a prominent part in the execution of the will as he was present in the house at the time of the alleged execution of the will. That natural heirs had been excluded from the properties bequeathed in favour of Dharmaraja H Kadamba and Raviraja Kadamba without any valid reasons. That the

respondents had failed to disclose the execution of the will in any of the earlier proceedings before the revenue authorities and the forest authorities which were contested between the appellants and Respondent Nos. 8-13 which throws a grave and serious doubt about the due execution of the will. That the will was got registered after a lapse of 4 years and did not see the light of the day till it was produced in the present proceedings after a lapse of more than 6 years. That the burden to dispel the suspicious circumstance enumerated above was on the propounders of the will which they had failed to discharge by leading cogent and acceptable evidence. As against this, Dr. Rajeev Dhavan, learned Senior Counsel appearing for the Respondent Nos. 8-13 contended that the due execution of the will had been proved by the testimony of the scribe and the two attesting witnesses coupled with the testimony of the hand-writing expert. That the attesting witnesses have categorically stated that the will had been executed in their presence and the testator signed the same while in sound disposing mind and in possession of full physical and mental faculties. The need to register the will after a lapse of 4 years arose as per the legal advice given to them. That the will had been disclosed to the respondents at the time of final obeisance ceremony of the deceased in the year 1976, and then in the year 1978 in the proceedings before the forest authorities. That the will was disclosed to the entire world at the time of its registration on 11.9.1980. According to him, there were no suspicious circumstances attending the due execution of the will and even if there were any such circumstances, the same had been dispelled by the respondents by leading cogent evidence.

It is well settled proposition of law that mode of proving the will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, 1925. 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 proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case. [For this see *H. Venkatachala Iyengar* v. *B.N.*

A *Thimmajamma and Ors.*, [1959] Supp. 1 SCR 426 and the subsequent judgments *Ramachandra Rambux* v. *Champabai and Ors.*, [1964] 6 SCR 814; *Surendra Pal and Ors.* v. *Dr. (Mrs.) Saraswati Arora and Anr.*, [1974] 2 SCC 600; *Smt. Jaswant Kaur* v. *Smt. Amrit Kaur and Ors.*, [1977] 1 SCC 369 and *Meenakshiammal (Dead) thr. LRs. and Ors.* v. *Chandrasekaran and* B *Anr.*, [2005] 1 SCC 280.]

In the light of this settled position of the law, we have to examine as to whether the will under consideration had been duly executed and the propounders of the will had dispelled the suspicious circumstances surrounding the will.

C Although the Trial Court as well as the High Court recorded a finding of fact that the will had been duly executed, but on the insistence of the counsel for the parties we have gone through the evidence of the scribe, two attesting witnesses and hand-writing expert at length.

D The propounder of the will has to show that the will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which E rests on the propounder is discharged. DW-2, the scribe, in his testimony has categorically stated that the will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he F signed the will in their presence and they had signed the will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been show that they were in any way interested in the propounders of the will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the Scribe (DW-2) and G the two attesting witnesses (DWs. 3 and 4) is fully corroborated by the statement of hand-writing expert (DW-5). The will runs into 6 pages. The testator had signed each of the 6 pages. Hand-writing expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the will are that of the testator. In our view, the will had been H duly executed.

Coming to the suspicious circumstances surrounding the will, it may be stated that although the testator was 80 years of age at the time of the execution of the will and he died after 15 days of the execution of the will, the two attesting witnesses and the scribe have categorically stated that the testator was in sound state of health and possessed his full physical and mental faculties. Except that the deceased is 80 years of age and that he died within 15 days of the execution of the will, nothing has been brought on record to show that the testator was not in good health or possessed of his physical or mental faculties. From the cross-examination of the scribe and the two attesting witnesses, the appellants have failed to bring out anything which could have put a doubt regarding the physical or mental incapacity of the testator to execute the will. Submission of the learned counsel for the appellants that the testator had deprived the other heirs of his property is not true. The family properties had been partitioned in the year 1961. The shares which were given to Dharmaraja Kadamba and Raviraja Kadamba were in possession of tenants and vested in the State Government after coming into force of Karnataka Land Reforms (Amendment) Act, 1973 whereas the properties which had been given to the daughters were in the personal cultivation of the family. The testator while executing the will bequeathed the properties which had fallen to his share in the partition and which he had inherited from his brother which were in his personal cultivation in favour of his two sons Dharmaraja Kadamba and Raviraja Kadamba and gave the right to receive compensation to other heirs of the properties which were under the tenants and had vested in the State Government. It is not a case where the father had deprived his other children totally from inheritance. Reasons for unequal distribution have been given in the will itself. This had been done by him to balance the equitable distribution of the properties in favour of all his children.

Counsel for the appellants argued that Respondent No. 13 had taken prominent part in the execution of the will as he was present in the house at the time of the alleged execution of the will. We do not find any merit in this submission. Apart from establishing his presence in the house, no other part is attributed to Respondent No. 13 regarding the execution of the will. Mere presence in the house would not prove that he had taken prominent part in the execution of the will. Moreover, both the attesting witnesses have also stated that the daughters were also present in the house at the time of execution of the will. The attesting witnesses were not questioned regarding the presence of the daughters at the time of the execution of the will in the cross-examination. The presence of the daughters in the house at the time of execution of the will itself dispels any doubt about the so-called role which

A Respondent No. 13 had played in the execution of the will. They have not even stepped into the witness box to say as to what sort of role was played by Respondent No. 13 in the execution of the will.

Another suspicious circumstance which was highlighted at great length by the learned counsel for the appellant is that the Respondent Nos. 8-13 had B failed to disclose the will for a period of 4 years in any of the earlier proceedings before the revenue authorities and the forest authorities. That the will was got registered after a lapse of 4 years and did not see the light of the day till the initiation of proceedings in the present suit. We do not find any substance in this submission as well. Respondent No. 13 in his testimony C has stated that the contents of the will were disclosed in the year 1976 at the time of final obeisance ceremony of the testator. There is not much of cross-examination of this witness on this point. None of the appellants have stepped in the witness box. Sukirthi Hegde (PW-1), husband of Appellant No. 3 i.e. grand-daughter of the testator, denies knowledge about the disclosure of the contents of the will at the time of final obeisance ceremony of the testator. D He has not even stated in his testimony as to whether he was married to Appellant No. 3 at the time of the death of the testator or that he was present at the time of final obeisance ceremony of the testator. There is nothing on the record which could persuade us to disbelieve the testimony of Raviraja Kadamba (DW-1). The case of the respondents is that the will was disclosed E in the year 1978 as well during the proceedings pending before the forest authorities. Respondent No. 13 had moved an application before the forest authorities for permission to cut the trees standing on the land which had come to his share under the will. It was contested by the appellants. A settlement was arrived at and the three daughters viz. Padmaraja Kadamba, Sridevi and Muttu @ Dejamma (out of whom two are the appellants and 3rd F died and is now represented through her daughter) in a joint statement filed before the authorities, categorically stated that "*we do not have any right over the said land*". It was also stated that after the death of their father, they did not have any objection for the grant of general certificate authorizing Respondent No. 13 to cut the trees in Survey No. 189. In view of this G statement, it does not lie in the mouth of the appellants to contend that they had any right over the property. From this it can be safely presumed that the statement that they did not have any right in the land was made by them only after knowing the contents of the will. Both the attesting witnesses have stated that the daughters were present at the time of the execution of the will. This assertion of the two attesting witnesses has not been controverted by H either of the daughters by appearing in the witness box. From their presence

in the house at the time of the execution of the will, it can reasonably be inferred that they had knowledge about the execution of the will. Under these circumstances, it cannot be held that the execution of the will had not been brought to the notice of the appellants.

At the time of registration of the will on 11.9.1980, the scribe and the two attesting witnesses had been produced before the Registrar. Their statements were recorded and only after satisfying himself, the Registrar registered the will. The statements of the scribe and the two attesting witnesses before the Registrar are in harmony with the statements made by them in the court. Another circumstances which was stressed during the course of the arguments by the counsel for the appellants was that although it was not necessary to get the will registered, but still the respondents got it registered after a period of 4 years only to lend authenticity to the will. According to Respondent No. 13, the will was got registered on the advice of a lawyer to enable them to produce it before various authorities. Since we have come to the conclusion that the daughters were present at the time of execution of the will by the testator and the execution of the same was disclosed at the time of final obeisance ceremony of the testator and that the will had also been brought to the notice of the appellants in the year 1978 during the proceedings before the forest authorities, the registration of the will in the year 1980 by itself does not cast a doubt regarding the execution of the will in the year 1976.

For the reasons stated above, we do not find any merit in this appeal and the same is dismissed with no order as to costs.

D.G. Appeal dismissed.