

SWARNALATHA & ORS.

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v.

KALAVATHY & ORS.

(Civil Appeal No. 1565 of 2022)

MARCH 30, 2022

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[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Will – Suspicious circumstances surrounding execution of the Will – Plea of – Tenability – Two separate Wills left behind by a married couple (testators) – Both spouses executed a Will each – Appellants are the successors-in-interest of the pre-deceased elder / first son of the testators – Respondent no.1 and.2 are respectively the daughter and other / second son of the testators – District Court rejected allegations of respondents about suspicious circumstances surrounding the Wills and granted probate of both the Wills in favour of the appellants – High Court reversed judgment of District Probate Court citing various suspicious circumstances including that there was total exclusion of Respondent no.1-daughter from the bequests – On appeal, held: The exclusion of one of the natural heirs from the bequest, cannot by itself be a ground to hold that there are suspicious circumstances – In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children – Court does not apply Art. 14 of the Constitution to dispositions under a Will – While reversing the judgment of District Probate Court, the High Court recorded certain suspicious circumstances, but each such circumstance, neither individually nor collectively creates a suspicion – High Court completely overlooked all the above aspects and proceeded to invent reasons to justify a conclusion that seems to have preceded the line of reasoning – Judgment of the District Court, granting probate of both the Wills, restored – Constitution of India, 1950 – Art. 14.

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Allowing the appeal, the Court

HELD:1. While reversing the Judgment of the Probate Court, the High Court recorded certain suspicious circumstances, but each such circumstance, neither individually nor collectively

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A creates a suspicion. The High Court completely overlooked all the above aspects and proceeded to invent reasons to justify a conclusion that seems to have preceded the line of reasoning. [Paras 16, 17 and 18][852-F; 854-C, F]

B 2. Once it is found that the father not only attested the mother's Will (Exhibit P-1) and once it is found that in his own Will (Exhibit P-2), which is a registered Will, the father had made a mention about the mother's Will, all the suspicious circumstances sought to be projected would automatically fall to the ground. [Para 20][854-H; 855-A]

C 3. When it was not even the case of the respondents that the testators were not in a sound and disposing state of mind, the High Court found fault with the appellants for not disclosing the nature of the ailments suffered by them. The exclusion of one of the natural heirs from the bequest, cannot by itself be a ground to hold that there are suspicious circumstances. The reasons
D given in Exhibit P-1 are more than convincing to show that the exclusion of the daughter has happened in a very natural way. If Exhibit P-1 (Will) had been fabricated on blank papers containing the signatures of the mother, there would have been no occasion for the father to make a mention in his own Will (Exhibit
E P-2) about the execution of the Will by the mother. [Para 21] [855-A-C]

4. It is not known how the High Court held the delay on the part of the appellants in seeking probate of the Wills to be a suspicious circumstance. Exhibit P-1 was executed on 30.01.1995
F and the testatrix died on 14.08.1995. The father was alive till 08.08.2000. Therefore, there was no necessity for the appellants to seek probate of the said Will. After the death of Mannar Reddiar [testator-father] on 08.08.2000, the appellants obviously had no support, due to the fact that the first son of the testators
G V.M. Chandrasekaran (husband of appellant No.1 and father of appellant Nos.2 and 3) had pre-deceased the father Mannar Reddiar, he having died in October-1999. The occasion for the appellants to seek probate of the Will arose only when the respondents filed the suit for partition in O.S. No.387 of 2005. Therefore, there was actually no delay on the part of the appellants
H in seeking probate. [Paras 22, 23][855-C-F]

5. The High Court made a mountain out of a molehill, by reading too much into the lack of knowledge on the part of appellant No.1 about the time of registration of Exhibit P-2 (Will) and the minor contradictions between her statement as PW-1 and the statements of PWs 4 and 5. The adverse inference sought to be drawn by the High Court about the failure of the testator Mannar Reddiar to ensure the presence of the daughter and the second daughter-inlaw at the time of execution of Exhibit P-2, has no basis in law. [Para 24][855-F-H]

6. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled. Cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will. [Para 25][855-H; 856-B-C]

7. It is not difficult for an objective mind to understand the reasons behind the daughter and the second son of the testators coming together. Under both the Wills Exhibit P-1 and P-2, the properties have been equally distributed between the two sons. The first son V.M. Chandrasekaran is now no more. Admittedly respondent no.1's daughter has been given in marriage to V.M. Sivakumar-respondent no.2 (second son of testator). Therefore, if the bequest under the two Wills go, V.M. Sivakumar's family may eventually receive 2/3rd share of the properties, which is more beneficial for V.M. Sivakumar than getting half share under the Wills. The High Court completely overlooked this aspect and started analyzing the Wills with suspicion. [Para 26][856-D-E]

8. The impugned judgment of the High Court is set aside and the Judgment of the District Court, granting probate of both the Wills, is restored. [Para 27][856-F]

Kavita Kanwar vs. Mrs. Pamela Mehta and Ors. AIR 2020 SC 544 : *H. Venkatachala Iyengar vs. B.N. Thimmajamma*, AIR 1959 SC 443 : [1959] 1 Suppl. SCR 426 – referred to.

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Case Law Reference**AIR 2020 2614 Para 25 referred to****[1959] 1 Suppl. SCR 426 Para 25 referred to**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1565 of 2022.

From the Judgment and Order dated 20.12.2018 of the High Court of Judicature at Madras in C.M.A. No. 2906 of 2010.

V. Prabhakar, Ms. Jyoti Parasher, S. Rajappa, Advs. for the Appellants.

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Jayanth Muthraj, Sr. Adv., Deivasigamani Saravanan, Mrs. Malavika Jayanth, Advs. for the Respondents.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN

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1. The probate granted by the District Court in respect of two last Wills and Testaments, one by the father and another by the mother, having been set aside by the High Court in an appeal under Section 384 of the Indian Succession Act, 1925 (hereinafter referred to as "*the Act*"), one set of legatees claiming under the Will have come up with the above appeal.

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We have heard Mr. V. Prabhakar, learned counsel for the appellants and Mr. Jayanth Muthraj, learned senior counsel appearing for the respondents.

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3. The couple, Mannar Reddiar and Adhilakshmiammal had two sons by name V.M. Chandrasekaran and V.M. Sivakumar and a daughter by name Kalavathy.

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4. The mother Adhilakshmiammal died on 14.08.1995. She left behind a Will dated 30.01.1995, bequeathing the properties purchased by her and the properties which she got from her maternal uncle, in favour of her two sons. The daughter Kalavathy was not given any share, on the ground that she had already been provided sufficiently.

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5. The father Mannar Reddiar died on 08.08.2000. He left behind a Will dated 10.12.1998 bequeathing his properties in favour of his two sons and his grandchildren. The daughter Kalavathy was not allotted any property even under this Will, but the Will contained reasons.

6. The eldest son V.M. Chandrasekaran died subsequently in October, 1999, leaving behind him surviving, his wife Swarnalatha and two sons by name C. Karthikeyan and C. Rishikesan, who are the appellants herein. A

7. Thereafter, the daughter Kalavathy and the surviving son V.M. Sivakumar (of the testators) filed a suit for partition in O.S. No.387 of 2005 on the file of the District Munsiff Court, Poonamallee. Upon coming to know of the same, the appellants herein who are the wife and sons of the eldest son V.M. Chandrasekaran filed a petition in probate O.P No.1 of 2005 on the file of the Principal District Judge, Vellore, under Sections 270, 276 and 289 of the Act for the grant of probate of the Wills of Mannar Reddiar and Adhilakshmiammal. The petition was hotly contested by the daughter and other son of the testators. However, by a judgment dated 7.06.2010, the District Court granted probate of both the Wills namely the Will dated 30.01.1995 executed by the mother Adhilakshmiammal and the Will dated 10.12.1998 executed by the father Mannar Reddiar. C D

8. Challenging the judgment of the Probate Court, the daughter and the other son of the testators (respondents 1 and 2 herein) filed an appeal under Section 384 of the Act on the file of the High Court of Judicature at Madras. The said appeal was allowed by the High Court by the impugned judgment on the ground that there are suspicious circumstances surrounding the execution of both the Wills. Therefore, aggrieved by the said judgment, the legatees are on appeal before us. E

9. The claim of the appellants before the Probate Court was that the parents executed their last Will and Testament, in a sound and disposing state of mind and that those Wills were executed in the manner prescribed by law. To establish the execution of the Will of the mother Adhilakshmiammal, in terms of Section 68 of the Indian Evidence Act, 1872, the appellants examined Mr. S. Rajasekaran as PW-2. He was one of the attestors of the Will. The other attestor of the Will was none else than the father Mannar Reddiar. One Mr. B. Nithyanandham, the scribe of the Will of the Mother was also examined as PW-3. F G

10. One Mr. M. Dakshinamurthy, who was one of the attestors of the Will of the father Mannar Reddiar, was examined as PW-4 and the scribe of the said Will by name Mr. V. Sivaram, was examined as PW-5. H

A 11. While the Will executed by the mother Adhilakshmiammal was an unregistered Will, the Will executed by the father Mannar Reddiar was a registered Will. Both these Wills were marked as Exhibits P-1 and P-2 respectively. The death certificates of the testators were marked as Exhibits P-3 and P-4 and the copy of the plaint in the partition suit filed by the respondents was marked as Exhibit P-5.

B 12. The daughter Kalavathy (Respondent No.1) examined herself as RW-1 and the other brother Shri V.M. Sivakumar (Respondent No.2) examined himself as RW-2. No documents were marked on the side of the respondents.

C 13. The respondents contested the probate proceedings on the ground that their parents never executed any Will and that the elder son V.M. Chandrasekaran played a fraud by taking signatures of the mother on blank papers and fabricating the same into a Will and that in any case the testators had no right to dispose of the properties by way of a Will.

D 14. Before the Probate Court, the respondents focused their attention on the so-called suspicious circumstances surrounding both the Wills. Though the respondents also raised a contention that the testators had no right to dispose of those properties by way of a Will, the Probate Court rejected the same outright on the ground that the scope of jurisdiction of the Probate Court was not to decide disputed questions of title to any property.

E 15. Insofar as the allegations of suspicious circumstances are concerned, the Probate Court was not convinced that the circumstances highlighted by the respondents raised any suspicion. Therefore, the court of original jurisdiction ordered the grant of probate.

F 16. While reversing the Judgment of the Probate Court, the High Court recorded the following findings:

G (i) Adhilakshmiammal, the testatrix of the unregistered Will (Exhibit P-1) dated 30.01.1995 was said to be suffering from ailments, prior to the execution of the Will. The ailments could be physical or mental and while physical ailment cannot be a ground to question the veracity of the Will, mental ailment will certainly be a ground. The non-furnishing of the particulars of the ailments suffered by the testatrix Adhilakshmiammal created a doubt;

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- (ii) The failure of the legatees to probate the Will of the mother Adhilakshmiammal during the life time of the father Mannar Reddiar is a suspicious circumstance; A
- (iii) According to PW-1, the Will executed by the father Mannar Reddiar, marked as Exhibit P-2 was written during night hours of 10.12.1998 but according to the evidence of PWs 4 and 5 (one of the attestors and the scribe) the Will was written at 7:00 a.m. and was registered at 3:00 p.m. on 10.12.1998. The contradiction between the statement of PW-1 and the statements of PWs 4 and 5 in this regard created suspicion. B
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- (iv) The ignorance of PW-1 about the date and time of registration of the Will of the father was one more circumstance that created a suspicion.
- (v) The failure of the father to ensure the presence of the daughter and the second daughter-in-law during the execution of both the Wills is one more circumstance creating a suspicion. D
- (vi) The presence of the first appellant herein at the time of execution of both the Wills, despite the appellant No.1 being a direct beneficiary, is also a circumstance to be taken notice of. E
- (vii) Exhibit P-1 (Will) executed by the mother runs to six pages. The signature of the testatrix is found exactly at the same location in pages 4 and 6. The super-imposition of pages 4 and 6 shows that the signature of the testatrix had been taken in Exhibit P-1 (Will) at the same place. F
- (viii) The line space in the first part of Exhibit P-1 (Will) is more than the line space in other parts of the Will. There is some difference in the style of writing in the first two pages from the writing in the last two pages of the Will. The signatures of the attestors of and the scribe are found within a small space. The signature of Mannar Reddiar as an attesting witness to Exhibit P-1 (Will) is not found below the word 'witness' but found by the side. G

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- A (ix) It is not clear as to how appellant No.1 came into the possession of the Will. There is no material to show whether the first appellant's husband V.M. Chandrasekaran pre-deceased the parents. In this context the delay in seeking probate creates a serious doubt.
- B (x) The total exclusion of the daughter from the bequest and the failure to mention in the Wills, the dates on which the daughter was paid certain amounts, are crucial.

C 17. But each one of the above circumstances, neither individually nor collectively creates a suspicion. The signature of the mother Adhilakshmiammal in Exhibit P-1 (Will) is not disputed. It was executed on 30.01.1995 and her husband namely Mannar Reddiar was one of the attestors to the Will. In fact the reading of Exhibit P-1 (Will) goes to show that the daughter Kalavathy was given in marriage to a bank employee way back in the year 1970. According to Exhibit P-1 (Will), the daughter was provided 50 sovereigns of gold jewellery at the time of the wedding. She was also given various amounts at different points of time totaling to Rs.75,000/-. It was further claimed in Exhibit P-1 (Will) that the mother gave Rs.25,000/- to the daughter Kalavathy for the purpose of purchase of two plots of land at Ambattur, in the outskirts of Chennai. The Will also mentions that the daughter's daughter was given in marriage to the second son V.M. Sivakumar. This is the reason why the second son V.M. Sivakumar joined hands with the daughter Kalavathy. Exhibit P-1 also makes a mention about the sum of Rs.40,000/- paid towards the discharge of a debt incurred by Kalavathy's husband (son-in-law).

F 18. Unfortunately, the High Court completely overlooked all the above aspects and proceeded to invent reasons to justify a conclusion that seems to have preceded the line of reasoning.

G 19. Similarly Exhibit P-2 (Will of the father) contains recitals to the effect that the daughter's daughter was given in marriage to the second son V.M. Sivakumar and that Adhilakshmiammal had left behind a Will dated 30.01.1995.

H 20. Once it is found that the father Mannar Reddiar not only attested the mother's Will (Exhibit P-1) and once it is found that in his own Will (Exhibit P-2), which is a registered Will, the father had made a

mention about the mother's Will, all the suspicious circumstances sought to be projected would automatically fall to the ground. A

21. When it was not even the case of the respondents that the testators were not in a sound and disposing state of mind, the High Court found fault with the appellants for not disclosing the nature of the ailments suffered by them. The exclusion of one of the natural heirs from the bequest, cannot by itself be a ground to hold that there are suspicious circumstances. The reasons given in Exhibit P-1 are more than convincing to show that the exclusion of the daughter has happened in a very natural way. If Exhibit P-1 (Will) had been fabricated on blank papers containing the signatures of the mother, there would have been no occasion for the father to make a mention in his own Will (Exhibit P-2) about the execution of the Will by the mother. B C

22. We do not know how the High Court held the delay on the part of the appellants in seeking probate of the Wills to be a suspicious circumstance. Exhibit P-1 was executed on 30.01.1995 and the testatrix died on 14.08.1995. The father was alive till 08.08.2000. Therefore, there was no necessity for the appellants to seek probate of the said Will. After the death of Mannar Reddiar on 08.08.2000, the appellants obviously had no support, due to the fact that V.M. Chandrasekaran (*husband of appellant No.1 and father of appellant Nos.2 and 3*) had pre-deceased the father Mannar Reddiar. It is recorded in the impugned Judgment that V.M. Chandrasekaran died in October-1999. D E

23. The occasion for the appellants to seek probate of the Will arose only when the respondents filed the suit for partition in O.S. No.387 of 2005. Therefore, there was actually no delay on the part of the appellants in seeking probate. F

24. The High Court made a mountain out of a molehill, by reading too much into the lack of knowledge on the part of appellant No.1 about the time of registration of Exhibit P-2 (Will) and the minor contradictions between her statement as PW-1 and the statements of PWs 4 and 5. The adverse inference sought to be drawn by the High Court about the failure of the testator Mannar Reddiar to ensure the presence of the daughter and the second daughter-in-law at the time of execution of Exhibit P-2, has no basis in law. G

25. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled and it needs no reiteration. It is H

- A enough if we make a reference to one of the recent decisions of this Court in *Kavita Kanwar vs. Mrs. Pamela Mehta and Ors.*¹ where this Court referred to almost all previous decisions right from *H. Venkatachala Iyengar vs. B.N. Thimmajamma*². But cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned.
- B This can be seen from the fact that almost all previous decisions of this Court referred to in *Kavita Kanwar* (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to
- C see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will.

26. It is not difficult for an objective mind to understand the reasons behind the daughter and the second son of the testators coming together.

- D Under both the Wills Exhibit P-1 and P-2, the properties have been equally distributed between the two sons. The first son V.M. Chandrasekaran is now no more. Admittedly Kalavathy's daughter has been given in marriage to V.M. Sivakumar (second son of testator). Therefore, if the bequest under the two Wills go, V.M. Sivakumar's family may eventually receive 2/3rd share of the properties, which is more beneficial for V.M. Sivakumar
- E than getting half share under the Wills. Unfortunately, the High Court completely overlooked this aspect and started analyzing the Wills with suspicion. Therefore, the impugned Judgment of the High Court is incapable of being sustained.

- F 27. In view of the above the appeal is allowed. The impugned judgment of the High Court is set aside and the Judgment of the Principal District Court, Vellore granting probate of both the Wills, is restored. There will be no order as to costs.

Bibhuti Bhushan Bose

Appeal allowed.

¹ AIR 2020 SC 544

² AIR 1959 SC 443