2025:KER:36448

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 29TH DAY OF MAY 2025 / 8TH JYAISHTA, 1947

RFA NO. 715 OF 2013

AGAINST THE JUDGMENT DATED 17.08.2013 IN OS NO.990 OF 2011 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/PLAINTIFF IN O.S:

DR.K.R. LEELA DEVI
W/O.P.A.RAMACHANDRAN AND D/O.K.S.RAGHAVAN,
HON.SENIOR CONSULTANT DEPT. OF LABORATORY MEDICINE,
KIMS HOSPITAL, THIRUVANANTHAPURAM AND RESIDING AT
3D, SANSKRITI APARTMENTS, PANDIT COLONY, KAWDIAR,
THIRUVANANTHAPURAM.

BY ADVS.
SRI.R.LAKSHMI NARAYAN
SMT.R.RANJANIE

RESPONDENTS/DEFENDANTS IN O.S.:

1 **K.R. RAJARAM**
S/O.K.S.RAGHAVAN, RETIRED CTE, RESIDING AT 'RAGHAVA NIVAS', KARIMPATTA CROSS ROAD, ERNAKULAM,
KOCHI 682 016 (DIED)

2 **CAPT. RETD DR.K.R.SUKUMARAN (DIED)**
S/O.K.S.RAGHAVAN, RESIDING AT 'DEEPAM', BTS ROAD,
ELAMAKKARA, ERNAKULAM, KOCHI 682 026.

3 R.RAGHAVAN (DIED)
S/O.K.RAMACHANDRAN, RESIDING AT RAGHU BHAVAN, TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695 014.(DIED)

4 R.JAYACHANDRAN
S/O.K.RAMACHANDRAN, RESIDING AT RAGHU BHAVAN, TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695 014.

5 R.RAJESH
S/O.K.RAMACHANDRAN, RESIDING AT 'RAGHU BHAVAN', TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695 014.

ADDL.R6 SUNANDA RAJARAM
AGED 81 YEARS
W/O. K.R. RAJARAM, RETIRED CTE, RESIDING AT 'RAGHAVA NIVAS', KARIMPATTA CROSS ROAD, ERNAKULAM, KOCHI - 682016

ADDL.R7 SUCHITHRA
AGED 59 YEARS
D/O. K.R. RAJARAM, RETIRED CTE, RESIDING AT 'RAGHAVA NIVAS' KARIMPATTA CROSS ROAD, ERNAKULAM, KOCHI - 682016

ADDL.R8 RAGHESH
AGED 57 YEARS
S/O K.R. RAJARAM, RETIRED CTE, RESIDING AT 'RAGHAVA NIVAS' KARIMPATTA CROSS ROAD, ERNAKULAM, KOCHI – 682016
(LEGAL HEIRS OF THE DECEASED R1 ARE IMPLEADED AS ADDL R6 TO R8, AS PER DATED 16.08.2023 IN I.A.NO. 01/2023).

ADDL.R9 DR.LALITHA C N, W/O DR.K.R.SUKUMARAN, AGED ABOUT 86 YEARS, RESIDING AT 'DEEPAM', BTS ROAD, ELAMAKKARA, ERNAKULAM, KOCHI 682026

ADDL.R10 DR.GOPIKA K S, D/O DR.K.R.SUKUMARAN,RESIDING AT 'DEEPAM', BTS ROAD, ELAMAKKARA, ERNAKULAM, KOCHI 682026

ADDL.R11 DEEPA K S, D/O DR.K.R.SUKUMARAN,RESIDING AT 'DEEPAM', BTS ROAD, ELAMAKKARA, ERNAKULAM, KOCHI 682026

IT IS RECORDED THAT THE ADDITIONAL RESPONDENTS 9 TO 11 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 2ND RESPONDENT AS PER ORDER DATED 24.01.2025 IN I.A.NO.1 OF 2024 IN R.F.A.NO.715 OF 2013.

ADDL.R12 ASHA RAGHAVAN, W/O R.RAGHAVAN, AGED ABOUT 69 YEARS, RESIDING AT 'RAGHU BHAVAN', TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695014

ADDL.R13 INDULEKHA RAGHAVAN, D/O R.RAGHAVAN, AGED ABOUT 43 YEARS, RESIDING AT 'RAGHU BHAVAN', TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695014

ADDL.R14 NEERAJA R,D/O R.RAGHAVAN, AGED ABOUT 34 YEARS, RESIDING AT 'RAGHU BHAVAN', TAGORE NAGAR, VAZHUTHACADU, THIRUVANANTHAPURAM, PIN 695014

IT IS RECORDED THAT THE ADDITIONAL RESPONDENTS 12 TO 14 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 3RD RESPONDENT AS PER ORDER DATED 24.01.2025 IN I.A.NO.1 OF 2024 IN R.F.A.NO.715 OF 2013.

BY ADVS.
NIRMAL.S
VEENA HARI
K.C.ELDHO
S.BIJILAL
ALMAJITHA FATHIMA
HIMA JOSEPH

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 20.05.2025, THE COURT ON 29.05.2025 DELIVERED THE FOLLOWING:

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JUDGMENT

P.Krishna Kumar, J.

The appellant filed a suit for partition of two items of properties against her brothers and the children of deceased siblings. The first defendant, the appellant's eldest brother, contested the suit, claiming that one of the properties—a residential building and 14.875 cents of appurtenant land—belongs to him under a Will executed by their mother. Accepting the first respondent's contentions, the trial court decreed the suit in part, excluding the said residential plot. This appeal is preferred against that judgment.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the suit. The skeletal facts necessary for the disposal of

this appeal are as follows: The plaintiff, defendants 1 and 2, the late Smt. K.R. Indira, and the late Sri K.R. Jayasanker, are the children of Sri. K.S. Raghavan and Smt. P. Bhavani. Raghavan served as the Secretary to the Government of the erstwhile Thiru-Kochi State and died in a plane crash in 1952. The plaintiff is a medical doctor who had served at Apollo Hospital, Chennai, and KIMS Hospital, Thiruvananthapuram. The first defendant retired as the Chief Technical Examiner under the government, having previously served as a Chief Engineer. The second defendant is a surgeon who held the rank of Captain in an Army hospital. After the death of K.S. Raghavan, his wife P. Bhavani and the children had executed a partition deed consolidating all the properties left behind by K.S. Raghavan, as well as the properties belonging to P. Bhavani, into their common stock. A residential building and the land appurtenant to it had been allotted to K.R. Jayasanker in the said partition deed and the said properties are shown in

the plaint as B schedule property. Later, on 30.04.1990, Jayasanker died intestate and issueless. Then the plaint B schedule property devolved upon the mother Bhavani, as per the law of succession applicable to the parties. Subsequently, on 27.08.1997 Smt. P. Bhavani also passed away.

3. At the time of her death, Bhavani left behind a total extent of 171.25 cents of wetland, which are described in the plaint A schedule as item Nos. 1 to 5. The plaintiff and the second defendant have pleaded that, besides the plaint A schedule wetlands, the B schedule residential plot is also available for partition among the legal heirs of Smt. Bhavani, as she died intestate.

4. There is no dispute as to the partibility of plaint A schedule lands. However, the first defendant asserted that late Bhavani had executed her last Will on 6.4.1988 (Ext.B2) at the Sub Registrar Office, Chathamangalam, Thiruvananthapuram, pertaining to the

plaint B schedule residential plot, and hence it is not partible.

5. The first defendant further pleaded that the plaintiff and the legal heirs of late Indira had executed a general Power of Attorney in his favour to sell the plaint A schedule property, but the sale failed due to the second defendant's non-cooperation. He asserted that after Bhavani's death, her legal heirs knew that she had executed a Will in his favor, and the institution of the suit was only an experiment made 21 years after Bhavani's death. He received a photocopy of the Will from his mother, and after her death, he mutated the property in his name. The original Will was kept at the residence of Sri. K. Ramachandran (husband of his sister- late Indira), where Bhavani had been staying, but it could not be traced out after her death. The defendant emphasized that he was not involved in the execution of the Will, of which the arrangements for execution was done by

K.Ramachandran. He further stated that late Jayasanker had rented portions of the plaint B schedule property to three tenants, two vacated on receiving ex gratia payments, and the third tenant was evicted through a legal proceeding instituted by the first defendant subsequent to the death of Bhavani.

6. The plaintiff in his replication contended that she was unaware of the execution of the Will. At the time of the alleged execution of the Will, their mother lacked the physical and mental capacity to do so due to age-related illness and a stroke which left her nearly bedridden since 1986. She also suffered from macular degeneration, impairing her ability to read. The Will was the result of coercion and undue influence exerted by the first defendant and was not executed out of the free will of their mother. The execution and registration of the Will are therefore, suspicious. The litigation mentioned in the written statement for evicting the tenant from the plaint B

schedule property was initiated by the first defendant as a co-owner.

7. We have heard Sri.R.Lakshmi Narayan, the learned senior counsel appearing for the plaintiff, Sri.K.C.Eldo, the learned counsel appearing for the second defendant and Sri.Nirmal S., the learned counsel appearing for the first defendant.

8. The genuineness and validity of the Will was seriously challenged by the learned counsel on the following grounds: (a) There was no mention of the other legal heirs of Bhavani in the Will, and no reason was assigned for excluding them from the bequest. (b) The attestors of the Will were not examined before the court to satisfy the requirement of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. (c) The purported attestors of the Will are admittedly stock witnesses, rendering the execution doubtful. (d) Although the scribe of the Will (DW5) was examined

before the court, he lacked *animo attestandi*, and thus the legal requirements under the aforementioned statutory provisions remain unfulfilled. (e) There is no proof before the court that the attestors of the Will are dead. Neither was any summons issued to them, nor was the procedure prescribed under Order XVI Rule 10 of the Code of Civil Procedure followed. (f) The first defendant failed to dispel the misgivings surrounding the execution and registration of the Will.

9. The learned counsel appearing for the plaintiff and the second defendant relied on the following decisions to substantiate their contentions: **N.Kamalam (Dead) and Another v. Ayyasamy and Another** [(2001) 7 SCC 503], **Babu Singh and others v. Ram Sahai alias Ram Singh** [(2008) 14 SCC 754],**Lilian Coelho & Ors. v. Myra Philomena Coalho** [(2025) 2 SCC 633],**H.Venkatachala Iyengar v. B.N.Thimmajamma and Others** (AIR 1959 SC 443),**Murthy & Ors. v. C.Saradambal & Ors.** [(2021) 14

SCR 836] and **M.L.Abdul Jabbar Sahib v. M.V.Venkata Sastri and Sons and Others etc.** (AIR 1969 SC 1147).

10. Sri.Nirmal S., the learned counsel appearing for the first defendant defended the impugned judgment contending that the trial court, having had the advantage of observing the demeanor of the parties and the witnesses, meticulously considered all contentions raised by the plaintiff and the second defendant, and thereafter found that the Will is genuine and that the statutory requirements for the execution, attestation and registration of a Will were duly complied with. Referring to the decisions in **Pentakota Satyanarayana and Others v. Pentakota Seetharatnam and Others** [(2005) 8 SCC 67] and **V.Kalaivani v. M.R.Elangovan** [(2024) Supreme (Online)(MAD)18778], the learned counsel further contended that the registration of the Will strongly supports its genuineness, as a presumption of regularity arises by virtue of such registration, and

that the mere fact that the witnesses of the Will are stock witnesses does not cast doubt on its genuineness. The learned counsel further argued that the plaintiff has no valid grounds to allege that the first defendant disregarded her request for partition, as she had earlier executed a general power of attorney in his favour for selling the lands described in Schedule A of the plaint. To demonstrate that the first defendant had filed a rent control petition to evict the tenant from the residential plot, the order passed by the rent control court was produced as Ext. B6. From that order, it is evident that the first defendant had submitted a copy of the Will to the court as early as in the year 1992. Since the plaintiff and the second defendant maintain that the litigation was initiated on behalf of all parties and that they were aware of it, it is evident that they had knowledge of the Will and did not object to it until 2011, when the suit was filed, he urged. Furthermore, the learned counsel emphasized that since

the first defendant has been residing in the B-schedule property ever since Bhavani's death and effected mutation in his name in 1991, all parties clearly knew of his title. According to him, the institution of the suit 21 years after Bhavani's death is only a speculative challenge.

11. The key question to be considered in this appeal is whether the Will is genuine and valid. The genuineness of a Will and the factum of its execution or registration cannot be determined solely on the evidence produced by the propounder. In addition to oral and documentary evidence, the court must consider the surrounding circumstances, inherent improbabilities, and the nature and contents of the document. Mere registration of the Will does not absolve the propounder from the obligation to prove the Will as required by law. It is also his duty to dispel all suspicious circumstances related to the execution of the Will, besides showing that at the

relevant point of time, the testator was of sound disposing state of mind and that the testator had signed the Will understanding the effect of the dispositions in it, and that the Will was attested by at least two witnesses. The mode of proof of a Will is in the manner provided in Section 68 of the Indian Evidence Act. It would also be idle to expect proof of the above facts with mathematical certainty in the matter of execution and registration of the Will, and thus, the test to be applied should be that of the satisfaction of a prudent mind in such matters.

12. In the light of the aforementioned general principles of law, let us now examine the evidence to determine whether the Will in question meets the legal requirements. To establish the due execution, registration, and attestation of the Will, the first defendant relies on the testimony of DW5, the scribe of Ext. B2. DW5 stated that Sri.Bhaskaran Nair, a retired officer from the Water Authority department,

who had been working under K. Ramachandran, brought Bhavani to his office for the purpose of executing the Will. Acting on Bhavani's instructions and referring to the copy of the title deed provided by her, DW5 prepared a draft of the Will, which Bhavani read and approved. Then Bhavani signed the fair copy of the Will. At that time, the attesting witnesses—Sri.Narayanan Nair, son of Parameswaran Pillai, and Sri.Raghavan Pillai, son of Raman Pillai—were present. The execution of the Will by Bhavani was witnessed by the said attesting witnesses, who also signed the Will in the presence of Bhavani and the DW5. Then DW5 also signed the Will in his capacity as the scribe.

13. DW5 further deposed that subsequently, Bhavani produced the Will before the Sub-Registrar in the presence of DW5. The Sub-Registrar verified the contents of the Will from Bhavani and confirmed its execution. Bhavani was of sound mind and possessed testamentary capacity at the time of executing the

Will. He identified Ext. B2 as the attested copy of the Will, along with the signatures of Bhavani, himself, and the attesting witnesses, as well as the endorsement, signature, and seal of the Sub-Registrar. He also identified Ext. B3, an attested photocopy of the filing sheet of the Will, bearing Bhavani's signature. Ext. B4, the attested copy of the thumb impression register related to the Will, containing Bhavani's signature and thumb impression, was also marked through him. He testified that the witnesses, Narayanan Nair and Raghavan Pillai were known to him. DW5 further stated that both of them subsequently passed away.

14. During cross-examination, he admitted that he had no prior acquaintance with Bhavani and he did not verify any identity document to confirm her identity. Bhavani had visited his office three times in connection with the execution of the Will. The attesting witnesses were arranged by DW5, who

regularly used their services for similar documentation purposes. These witnesses frequently participated in the execution of documents and were paid for their services. DW5 did not ascertain whether the wives or children of the attesting witnesses were alive, nor was he aware of their place of residence.

15. The plaintiff and the first defendant gave evidence as PW1 and DW1 respectively, in support of their pleadings. Both reiterated that their mother lacked testamentary capacity at the time of execution of the Will, having been bedridden due to multiple ailments following a stroke suffered in 1986. DW2, the wife of the second defendant, who is an Assistant Surgeon in the medical service, also gave evidence consistent with this version. However, their cross-examination revealed that no medical records are available to substantiate that Bhavani suffered from any ailment severe enough to impair her testamentary capacity.

16. DW3, the first defendant, also testified in support of his pleadings. He stated that from 1987 to 1990, he had been residing in a rented house in Thiruvananthapuram, during which period, including the time of the execution of the Will, Bhavani was living with Sri K. Ramachandran. According to him, Bhavani remained in sound physical and mental condition, notwithstanding a mild heart attack she had in 1977 and a condition diagnosed as ischemia shortly before her death.

17. DW4, the son of Sri K. Ramachandran and the late Indira, likewise supported the case of the first defendant. He deposed that he had once accompanied Bhavani to the document writer’s office and confirmed her sound disposing state of mind at the time of executing the Will.

18. Let us now consider the crucial defence raised by the plaintiff and the second defendant to

assail the legality of the Will, namely, the failure to prove the Will in accordance with Section 68 of the Indian Evidence Act.

19. As per Section 67 of the Indian Evidence Act, if a document is alleged to be signed by a person, it must be proved that the signature on the document is in that person's handwriting. Section 68 of the Evidence Act, *inter alia*, provides that if the document is a Will, it shall not be used as evidence until at least one attesting witness is called to prove its execution, provided such a witness is available. It reads:

> "68. **Proof of execution of document required by law to be attested** – If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:
>
> Provided that it shall not be necessary to call an attesting witness in proof of the

> execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied."

However, Section 69 of the Evidence Act provides the procedure to be followed when the attesting witnesses cannot be examined due to any of the circumstances specified in Section 68. It reads:

> "69. **Proof where no attesting witness found** – If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."

Thus, when no attesting witness can be found, it must be proved that the attestation by at least one attesting witness is in his handwriting and that the signature of the person executing the document is in that person's handwriting. Reading Sections 68 and 69

of the Evidence Act together, it is clear that if the propounder succeeds in proving that the attesting witnesses are dead, the Will can be proved by establishing that the signature of the executant and the attestation by at least one witness are in their respective handwritings.

20. Therefore, a witness cited to prove a Will under Section 69 of the Evidence Act need not necessarily be a person who had seen the executant and attesting witnesses affixing their signatures; it is sufficient to prove that the signatures were in the handwriting of the respective persons. This is the essential distinction between the mode of proof under Section 68 and Section 69 of the Indian Evidence Act. This court has taken a similar view in **C.G. Raveendran v. C.G. Gopi** (AIR 2015 Ker 250).

21. In a case where the witness cited to prove the Will under Section 69 of the Evidence Act establishes that he had witnessed the testator and the

witnesses signing the Will, it is sufficient proof that the attestation by the attesting witnesses is in their handwriting and that the signature of the testator is in that person's handwriting. It constitutes sufficient compliance with Section 69. When the witness deposes that he saw the executant and the attesting witnesses sign the document in question, it amounts to the proof required under Section 69. In the above context, it is also relevant to note the opinion of the Division Bench of the Patna High Court in **Haradhan Mahatha and Others v. Dukhu Mahatha** (AIR 1993 Pat 129), where it is held as follows:

> "Identification of signature is not necesary to prove a document, as required under Section 69 of the Act. Identification of signature is necessary only if document is not signed in presence of the witness. In a case, where document has been executed in presence of a witness, it is not necessary for him to say that he identifies the signature. It is sufficient for the witness, if he says that the document in question produced in Court, to which his attention was drawn, was executed and attested in his presence. Therefore, I

> am clearly of the view that the requirement of Section 69 of the Act has been complied with and the Will in question has been rightly admitted into evidence by trial Court."

22. While Section 68 of the Evidence Act deals with the mode of proof of execution of documents required by law to be attested, Section 69 provides an alternative procedure for proving such a document when the mode provided in Section 68 cannot be resorted to in certain circumstances. Nevertheless, Section 69 can be invoked only on satisfaction of the condition mentioned therein. Once the document is proved in the manner provided in Section 69, it amounts to the proof of due execution and attestation of that document.

23. In this case, there is no dispute that the attesting witnesses were arranged by DW5, the document writer, and they were closely associated with him. He was cross-examined at length by the plaintiff as well as the second defendant, but his version—that those witnesses are now deceased—remains unchallenged. He

was asked only about the wives and children of the witnesses; it was not even suggested to him that his statement that the witnesses are no more is false. DW3 also deposed that he had made enquiries about the said witnesses and understood that they had passed away. This testimony also went unchallenged during cross-examination. A conjoint reading of the evidence of DW3 and DW5 renders it sufficient to invoke Section 69 of the Evidence Act.

24. DW5, the scribe of the Will, deposed that after he prepared the document, the executant and attestors of the Will signed in his presence. There is no dispute that the document was prepared by him in his capacity as the scribe. He has signed beneath the Will in that role. As was noticed earlier, the filing sheet was also brought before the court. His testimony, confirming the signatures of Bhavani and attesting witnesses on Ext. B2 Will remained solid, even after a rigorous cross-examination. The trial

court found his evidence reliable and that he is a trustworthy witness. It could not be established otherwise before us. We find no reason to doubt his evidence. This is sufficient to prove the due execution of the Will.

25. Referring to the decision of the Honourable Supreme Court in ***Babu Singh and Others v. Ram Sahai alias Ram Singh*** (supra), it was further argued that unless summons is issued to the attesting witnesses, it cannot be concluded that the witnesses are dead. We, however, do not find any legal proposition to that effect in *Babu Singh and Others* (supra), as argued by the learned counsel. In that case, the propounder contended that one of the attesting witnesses had been won over by the opposite party. During the hearing, the counsel for the propounder stated that the other witness had gone abroad and was, therefore, beyond the court's process. This stand was not accepted by the trial court, though the appellate court found it

sufficient. In those circumstances, the Honourable Supreme Court observed that a mere statement made through counsel, as opposed to one made on oath by the party, cannot be treated as evidence. It was emphasised that such a submission from the Bar cannot substitute the satisfaction of the requirement necessary for invoking Section 69 of the Evidence Act. Significantly, the Court further observed in paragraph 27 as follows:-

> "Assuming, however, that even taking the course of Order XVI of the Code of Civil Procedure might not be necessary, what was imperative was a statement on oath made by the plaintiff. A deposition of the plaintiff is as a witness before the Court and not the statement through a counsel across the Bar. Such a statement across the Bar cannot be a substitute for evidence warranting invocation of Section 69 of the Evidence Act"

26. The learned senior counsel for the appellants further argued that DW5 did not possess *animo attestandi*, i.e., the intention to attest the document. DW5 was not examined as an attesting witness

in proof of the Will under Section 68. Hence the question of his animus is irrelevant.

27. Another challenge raised is about the validity of the attestation of the Will when it is attested by two witnesses which the learned counsel would refer to as "stock witnesses". To refute this argument, the learned counsel appearing for the first defendant placed reliance on the observation of **V.Kalaivani v. M.R.Elangovan** (supra) that no adverse inference could be drawn against the due attestation of a Will solely for the said reason. Unlike in a criminal prosecution, where the presence of stock witnesses casts serious doubt on the likelihood of their having witnessed the offence, the fact that a Will is attested by such witnesses—when the act of signing is a verifiable physical act—does not, by itself, affect the validity of the attestation. Similarly, merely because the witnesses of a Will are not related to the testatrix, it is not possible to

doubt the genuineness of the Will. It was DW5 who prepared the Will and arranged the witnesses and registration. It is already found that he is a reliable witness and his evidence appeared trustworthy. Therefore, the mere fact that the witnesses were arranged by DW5 does not throw any cloud on the execution and attestation of the Will.

28. The next issue is about the disposing state of mind of the testatrix. As was noticed earlier, though the appellants alleged that the testatrix was suffering from ailments, there is total lack of evidence to substantiate the same. After going through the entire evidence, we find no reason to doubt the soundness of mind and the disposing capacity of the testatrix at the time of execution of Ext. B2 Will. When we read the evidence of DW5 together with the versions of DW3 and DW4, it satisfies our minds to arrive at such a conclusion. DW5 deposed that the testatrix walked into his office without any

assistance, the other witnesses described in detail her physical and mental condition at that time. As she had been living at the residence of DW4 during the relevant time, we find no reason to reject his evidence on that aspect. The cross-examination of these witnesses does not yield any material result to discredit the above version. Though it was vehemently contended that Bhavani had been suffering from macular degeneration of her eyesight and had been bedridden since 1986, when Ext. B19 to B21 (photographs) were shown to DW2 during cross-examination, he conceded that it depicted Bhavani visiting his grandchild at Ernakulam in September 1988. The trial court, after examining the photographs, rightly observed that the testatrix appeared to be in sound health, then.

29. It is also relevant to note that, the plaintiff, a doctor by profession, and the second defendant, a Surgeon, whose wife (DW2) was also working as a senior doctor in a reputed hospital at

Thiruvananthapuram, failed to produce any medical record to prove Bhavani's alleged physical incapacity, despite having claimed that she suffered a stroke in 1986 and was treated at S.U.T. Hospital. True, according to the Will, Bhavani was 81 years old at the time of its execution. However, considering the testimony of the aforementioned witnesses, particularly DW2, it appears that her advanced age did not impair her testamentary capacity.

30. There is no material to suggest that the first defendant, the propounder of the Will, was involved in the execution of the Will. Bhavani was not even residing with him at the time of its execution. It was indeed contended that Sri. Ramachandran, with whom Bhavani had been living at the relevant time, colluded with the first defendant in the execution of the Will; apart from such a bald allegation, we find no sufficient material or reason to substantiate this contention.

31. It is also not a disputed fact that the first defendant had been staying in a rented house from 1987 to 1990 and that he had no residential house of his own. Bhavani shifted her residence from that of Ramachandran and began staying with the first defendant just before her death in 1990; from that residence, she was airlifted to Ernakulam and later passed away at the plaint B schedule property. Bhavani had not been residing with either the plaintiff or the second defendant for a long time. It suggests reasons for the bequest.

32. We note that there is no dispute, either in the pleadings or during the trial, regarding the signature of Bhavani in Ext.B2 Will. The contention was only that the execution of the Will was the result of coercion and undue influence allegedly exerted by the first defendant. We are mindful of the law laid down by the Apex Court in **Pentakota Satyanarayana** case (supra) that, although the registration of a Will does

not absolve the propounder from adducing evidence to prove its due execution, the regularity of the official acts of the Registrar in respect of registering the document can be presumed under Section 114 of the Evidence Act, unless the contrary is proved. Section 34 of the Registration Act, 1908 mandates that the registering authority shall conduct an enquiry into the identity of the executant of all registered deeds.

33. In this case, the first defendant cannot be criticised for not examining Bhaskaran Nair, the person who assisted Bhavani in getting the Will prepared by DW5. DW4 deposed before the court that Bhaskaran Nair was no more, and his statement remains unchallenged. DW4 further explained the circumstances in which Bhavani was said to have sought the assistance of his father, Sri K. Ramachandran, who in turn deputed the said Bhaskaran Nair, a former associate. DW4 also explained the reasons why

Ramachandran did not mount the witness box. He stated that Ramachandran was 85 years old at the relevant time, had become blind, and had undergone angioplasty. DW4 produced certain medical records as well to establish Ramachandran's ailments. His statement remains undisputed.

34. It is settled law that the role of the court, while considering the question whether there are suspicious circumstances related to the execution of the Will, is to ascertain whether the evidence on record satisfies its conscience to see that the instrument propounded as the last Will of the deceased is a product of a free and sound disposing mind of the testator. A Will is generally executed to alter the mode of succession. In ***Ramabai Padmakar Patil v. Rukminibai Vishnu Vekhande*** [(2003) 8 SCC 537], it was held that although the propounder of a Will must remove all suspicious circumstances surrounding the Will, the mere fact that natural heirs have been

excluded, by itself, cannot be treated as a suspicious circumstance, especially where the bequest is made in favour of an offspring.

35. In ***Venkatachala Iyengar v. B. N. Thimmajamma and Others*** [AIR 1959 SC 443], the Honourable Supreme Court identified the following as relevant indicators of suspicious circumstances surrounding a Will: (i) when a doubt is created regarding the mental condition of the testator despite their signature on the Will; (ii) when the disposition appears unnatural or wholly unfair in the light of surrounding circumstances; and (iii) where the propounder himself takes a prominent role in the execution of the Will, which confers on him substantial benefit. After thoroughly examining the evidence on record and all attending circumstances, we do not find that any of the above conditions are attracted in the present case. We find merit in the contention raised by the first defendant that the

existence of the power of attorney for the sale of the plaint A-schedule lands, the mutation of the residential plot effected on the basis of the Will nearly two decades before the institution of the suit, and the eviction petition against a tenant wherein a copy of the Will was produced, collectively support the genuineness of the Will.

36. What emerges from the above discussion is that the first defendant has successfully proved the due execution and registration of the Will. The evidence on record, along with the circumstances arising therefrom, compels us to conclude that Ext. B2 Will is genuine, and that it was duly executed by the late Bhavani. The trial court has extensively dealt with the entire evidence on record. We have re-appreciated the evidence and find no material to differ from the conclusions arrived at by the trial court. There is no reason to interfere with the impugned judgment.

Accordingly, the appeal is dismissed, affirming the impugned judgment. No order as to cost. All pending interlocutory applications stand closed, including the one seeking to receive additional evidence.

Sd/-

SATHISH NINAN

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

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