

[2026 LiveLaw \(SC\) 681](#)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SANJAY KAROL; J., VIPUL M. PANCHOLI; J.

Special Leave Petition (Civil) No.9510 of 2023; July 15, 2026

LAKSHMI versus GOPI & ORS.

Code of Civil Procedure, 1908 — Section 96 & Order XLI Rule 31 — Scope and Powers of First Appellate Court — Necessity of Reasoned Judgment — Reversal of Trial Court Judgment - The First Appellate Court is the final court of fact and is vested with a valuable right to re-hear the entire case on both questions of law and fact - When reversing a judgment of the Trial Court, the Appellate Court is bound to apply its mind, evaluate the evidence independently, and record clear, cogent, and succinct reasons for its disagreement rather than passing a cryptic order - A judgment that merely extracts the Trial Court's reasoning and brushes it aside by asserting that the lower court failed to understand the dispute violates the well-established principles governing first appeals - Reason is the lifeblood and heartbeat of every judicial conclusion, serving as a deterrent against arbitrary actions and ensuring public confidence in the justice delivery system. [Paras 5-10]

Indian Succession Act, 1925 — Sections 59 & 63 — Indian Evidence Act, 1872 — Sections 45, 47, 67 & 68 — Proof of Genuineness of Will — Duties of Appellate Court - Adjudication on the validity and genuineness of a Will requires specific statutory compliances, including proving the signature of the testator, evaluating the testimony of at least one attesting witness, and establishing that the testator was of sound mind, understood the nature/effect of the dispositions, and signed out of free volition - An Appellate Court tasked with determining the validity of a Will cannot overturn the Trial Court's findings without discussing these statutory aspects on the touchstone of evidence led by the parties. [Para 11]

Judicial Discipline & Restraint — Adverse and Disparaging Remarks against Lower Judicial Officers - The practice of passing sweeping generalisations or disparaging remarks against Trial Judges and directing them to undergo training merely because their reasoning is perceived as erroneous is highly deplorable - Proper freedom, independence, fearlessness, and professional competence of lower judicial officers must be strictly protected against undue interference - Judicial pronouncements must strictly exhibit sobriety, moderation, fair play, and reserve - Robes carry immense power, and adverse remarks must not be passed lightly or in ordinary circumstances as they jeopardize judicial independence and deter officers from carrying out their duties. [Relied on *Travancore Rayon Ltd. v. Union of India*, (1969) 3 SCC 868; *State of Punjab v. Jagdev Singh Talwandi*, (1984) 1 SCC 596; *Raj Kishore Jha v. State of Bihar*, (2003) 11 SCC 519; *CCT v. Shukla & Bros.*, (2010) 4 SCC 785; *Kranti Associates (P) Ltd. v. Masood Ahmed Khan*, (2010) 9 SCC 496; *State of U.P. v. Mohd. Naim*, 1963 SCC OnLine SC 22; *State of Punjab v. Shikha Trading Co.*, (2023) 20 SCC 113; Para 8-12].

[Arising out of impugned final judgment and order dated 30-11-2022 in RFA No.298/2019 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s): Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv. Mr. Santhosh K, Adv. Mrs. Devika A.L., Adv.

For Respondent(s): Mr. Venkita Subramoniam T.R, AOR Mr. Varun Mudgal, Adv. Mr. Hari Vishnu, Adv.

J U D G M E N T

SANJAY KAROL, J.,

1. Leave granted.

2. Arising out of a dispute pertaining to the execution of the alleged *last Will and testament* of one Thankam, this appeal challenges the final judgment and order dated 30th November 2022 in RFA No. 298 of 2019 passed by the High Court of Kerala at Ernakulam, that had in turn been preferred against the judgment and decree dated 18th February 2019 in O.S. No. 156 of 2015 delivered by the Principal Sub Court, Thrissur¹.

3. The facts are that the Thankam was the mother of the plaintiff and defendant nos. 1, 2, 4 and 5 before the Civil Court. She died on 27th August 2011. The Civil Court records that as per the defendant-respondents herein Thankam had executed a registered *Will* as No.35 of SRO, Ollukara, dated 22nd March 1999 and bequeathed her property to the abovementioned defendant - nos. 1, 2, 4 and 5. The plaintiff-appellant herein had no knowledge of this *Will* and hence, upon her mother's death, had filed a suit for partition. It was held that the *Will* could not be proved in accordance with Section 63 of the Indian Succession Act 1925². A preliminary decree was passed directing the suit property to be divided into 10 shares and the plaintiff-appellant being entitled to a 2/10th share.

3.1 The defendants approached the High Court. In a judgment of only two paragraphs and three-and-a-half pages, of which more than one page is spent on extracting the reasoning of the Civil Court, the judgment of the Court below has been set aside. That apart, the judgment of the Civil Court has been termed to be entirely lacking in as much as the Court was unable to understand the controversy in issue and the judge has been directed to be sent for training.

"1. The dispute involved is pertaining to the due execution of a registered Will Ext.B1, for which one among the propounders gave oral evidence as DW1 and one of the attesting witnesses was examined as DW2. During the cross-examination, nothing was brought out to discredit either the propounder or the attesting witness. The testator was also introduced before the Sub-Registrar for the purpose of its registration by two witnesses and one among the witness is none else, DW2. In fact, no challenge was raised with respect to the competency of the testator. She died in a motor vehicle accident on 27/8/2011 and the Will was executed 12 years prior to the abovesaid alleged accident. But the trial court on some extraneous consideration found that there is failure to prove the due execution of the Will and hence granted a decree for partition. The relevant portion of the impugned judgment (paragraphs 17 to 22) are extracted below for reference:

"17. The one attesting witness examined in his evidence has to satisfy the attestation of a Will by him and the other attesting witness in order to prove there was due execution of Will. To put in other words, if one attesting witness can prove execution of the Will in terms of clause (c) of Section 63 of Indian Succession Act viz, attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a Will by him and the other attesting witness in order to prove there was due execution of the Will.

18. In the evidence of DW2 it is lacking that execution of the Will by Thankam was witnessed by him and the other attesting witness. Therefore, it cannot be found that the defendants proved execution of the Will by Thankam.

19. In the cross examination DW3 stated unequivocally that Thankam was illiterate and she could not write or read. A document can said to be duly executed only when it is shown that the

¹ Civil Court

² ISA

executant signed the document of his own volition after fully knowing the content of the document and at the time of execution he was capable of forming a rational judgment as to its effect. In the instant case there is no evidence that the content of the Will was read over to Thankam before she affixed her signature.

20. The defendants have no case that Anthony, the other attesting witness, is dead or not subject to the process of the Court or not capable of giving evidence. No explanation as to why he was not examined before the court was offered. DW3 in his cross examination stated that Thankam did not have acquaintance with Anthony.

21. Another suspicion surrounding execution of the Will is that DW2 was asked by Thankam to be witness only on 22.3.1999. If that be so the Will might have been prepared on 22.3.1999. DW2 did not state that he saw the Will being prepared.

22. The learned counsel for the defendants submitted that the Will is a registered one. It is true that it was registered. The fact that the Will was registered does not relieve of the duty of the propounder to prove its due execution. On account of registration the only presumption which can be drawn is that acts for the registration was performed as being performed.”

2. It is illustrative of what is actually going on in our system. The trial court did not understand the actual dispute involved and the requirement in proof of a testament. Highly extraneous matters were taken to reject the due execution of Will in question such as no case was advanced that the Will was read over to the testator and no case was advanced as to whether the other attesting witness was alive or not. It is a judgment rendered by an officer in the cadre of Principal Sub Judge and that itself would show the seriousness of the laches on the part of the officer. Necessarily, proper training should be given to the officer concerned. The decree and judgment of the trial court are hence set aside and the suit is dismissed. The appeal will stand allowed accordingly. No costs. The Registry is directed to forward a copy of this judgment along with the impugned judgment to the Director (Academic), Kerala Judicial Academy for further action.”

(emphasis supplied)

3.2 Aggrieved by the aforesaid, the plaintiffappellant is in appeal before this Court.

3.3 Heard learned counsel for the parties.

4. Consequently, the scope of this appeal is limited to two aspects. *One*, the manner in which the first appeal has been dealt with by the High Court; and *Two*, whether the remarks against the Judge of the Civil Court are justified or not.

5. Section 96 of the Code of Civil Procedure, 1908³, permits the Court to deal with both questions of law and fact which is reproduced below:

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

The Court in first appeal is the final court of fact. The facts once determined by the Appellate Court are not open to challenge before the High Court, and even this Court does not

³ CPC

undertake re-appreciation of evidence under Article 136 until and unless some glaring error such as complete misdirection is pointed out.

In **Arunachalam v. P.S.R. Sadhanantham**⁴, O. Chinnappa Reddy J., while dealing with the criminal appeal expounded as follows, about the scope of Article 136 in general:

“4. ... Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted “perversely or otherwise improperly”. ...”

In an appeal arising out of the Land Acquisition Act 1894, a coordinate bench in **Mahesh Dattatray Thirthkar v. State of Maharashtra**⁵ spoke as follows:

“27. It is not in dispute that power under Article 136 of the Constitution of India is exercisable not only against a judgment of reversal on facts but also in cases of concurrent findings of fact and such powers are wide enough. ...

A reading of this observation of this Court, as quoted hereinabove and considering the expressions used in Article 136 of the Constitution, it would not be difficult to understand that this Court in its discretion may grant leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India which would be apparent also in cases of judgment of reversal and affirmance in civil proceedings.

28. It is true that the aforesaid observation was made by this Court while dealing with a criminal case but the scope of Article 136 of the Constitution of India cannot be different in civil or criminal proceedings. It is also true that this Court while exercising its power under Article 136 of the Constitution of India will not readily interfere with the findings of fact given by the High Court but it can interfere with such findings of fact if the High Court acts *perversely or otherwise improperly*.”

In similar terms was **Mangla Ram v. Oriental Insurance Co. Ltd.**⁶, which stated:

“16. ... We are conscious of the fact that in an appeal under Article 136 of the Constitution, ordinarily this Court will not engage itself in reappreciation of the evidence as such but can certainly examine the evidence on record to consider the challenge to the findings recorded by Tribunal or the High Court, being perverse or replete with error apparent on the face of the record and being manifestly wrong.”

6. That being the position, the importance of determination by the First Appellate Court is underscored. Order 41 rule 31 of CPC provides for the particulars that ought to be present in the judgment that challenges a decree. It reads as under:

“**Order 41 Rule 31. Contents, date and signature of judgment.**— The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and

⁴ (1979) 2 SCC 297

⁵ (2009) 11 SCC 141

⁶ (2018) 5 SCC 656

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

The scope of the first appeal and its essentials have time and again engaged the attention of this Court. From a perusal of those judgments, the following principles/aspects can be deduced:

- (i) First appeals must be decided in accordance with the provisions of CPC;
- (ii) In a first appeal, which is a valuable right of the party, it is open for the whole case to be re-heard, on both facts and law. Anything less than this, has been stated to be unjust to the litigant;
- (iii) The judgment of the Court must - **(a)** reflect application of mind; and **(b)** support its conclusion by reasons.
- (iv) When the Court agrees with the judgment impugned in appeal, the entire factual matrix need not be laboriously restated and general agreement nonetheless accompanied by some reasons thereto, shall suffice. However, this cannot overshadow the duty of the Court itself. It cannot therefore pass a cryptic order in either situation.
- (v) In a case of reversal, the Court must give due consideration to the appraisal of evidence by the Trial Court, and on its own evaluation, should it arrive at a different conclusion, reasons therefor must be stated;
- (vi) The First Appellate Court is a final Court of facts. In a sense, it is also the final Court of law also, unless the question presented on second appeal is a substantial question of law;
- (vii) The First Appellate Court must deal with all the issues and evidence led by parties in arriving at its findings; and
- (viii) In ordinary circumstances, the First Appellate Court shall frame points for determination. However, not doing so will not vitiate the judgment itself so long as reasons are recorded.

[See: Santosh Hazari v. Purushottam Tiwari⁷; Madhukar v. Sangram⁸; H.K.N. Swami v. Irshad Basith⁹; B.V. Nagesh v. H.V. Sreenivasa Murthy¹⁰; SBI v. Emmsons International Ltd.¹¹; SBI v. Emmsons International Ltd.¹²; K. Karuppuraj v. M. Ganesan¹³; Kurian Chacko v. Varkey Ouseph¹⁴; Somakka v. K.P. Basavaraj¹⁵; Mahender Pal Chabra v. Subhash Aggrawal¹⁶; Kiranmal Zumerlal Borana Marwadi v. Dnyanoba Bajirao Khot¹⁷; Laliteshwar Prasad Singh v. S.P. Srivastava¹⁸

7. Whether or not the impugned judgment satisfies the above principles, is a question we will return to, but at this juncture we must discuss one of the important facets above - the necessity of giving reasons. It is unquestionably well established that reasons are the life blood of law. Without this, the old adage ‘*justice is not only to be done but it also must be seen to be done*’ loses its vitality. Even though the position is well established, occasions such as the present one necessitate its restatement:

⁷ (2001) 3 SCC 179

⁸ (2001) 4 SCC 756

⁹ (2005) 10 SCC 243

¹⁰ (2010) 13 SCC 530

¹¹ (2011) 12 SCC 174

¹² (2011) 12 SCC 174

¹³ (2021) 10 SCC 777

¹⁴ 1968 SCC OnLine Ker 101 as approved in

¹⁵ (2022) 8 SCC 261

¹⁶ (2024) 14 SCC 767

¹⁷ (1983) 4 SCC 223

¹⁸ (2017) 2 SCC 415

7.1 In the context of the Central Excise and Salt Act 1944, a coordinate Bench in **Travancore Rayon Ltd. v. Union of India**¹⁹, held that when an executive authority exercises judicial functions, reasons are absolutely necessary:

“11. ... Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a nonjudicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.”

(emphasis supplied)

7.2 Y.V. Chandrachud CJ, writing for a Constitution Bench in **State of Punjab v. Jagdev Singh Talwandi**²⁰, held that when a detainee under the National Security Act 1980 is released, the subjective satisfaction of the concerned authority must be displayed by recording reasons:

“30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the other, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detainee be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.”

(emphasis supplied)

7.3 In the context of Section 386 of the Code of Criminal Procedure 1973, this Court in **Raj Kishore Jha v. State of Bihar**²¹, where the findings of the Trial Court were reversed by the High Court in appeal, observed that:

“19. ... non-reasoned conclusions by appellate courts are not appropriate, more so, when views of the lower court are differed from. In case of concurrence, the need to again repeat reasons may not be there. It is not so in case of reversal. Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

7.4 In **Omar Usman Chamadia v. Abdul**²², a coordinate Bench took exception to the approach of the High Court in not passing a reasoned order on account of the fact that the counsel appearing in a matter did not press for the same. The effect thereof, was that this

¹⁹ (1969) 3 SCC 868

²⁰ (1984) 1 SCC 596

²¹ (2003) 11 SCC 519

²² (2004) 13 SCC 234

Court did not have the benefit of the reasons of the High Court and, therefore, had to decide the matter on the basis of the material available on record.

7.5 A revision petition preferred by the Assistant Commissioner, Income Tax, came to be dismissed of by the High Court by way of what can be termed as a ‘*catchall statement*’ and nothing further. On appeal, this Court set aside the impugned order and remanded the matter for fresh hearing observing as follows in **CCT v. Shukla & Bros.**²³:

“24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (*Wharton's Law Lexicon*). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. ... Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.”

(emphasis supplied)

7.6 In **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**²⁴ this Court after considering a number of judicial pronouncements culled out the following principles whereby it has been underscored that both judicial and quasi-judicial authorities must give reasons in their orders:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

²³ (2010) 4 SCC 785

²⁴ (2010) 9 SCC 496

- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

8. On the anvil of the principles summarised *supra*, regarding the jurisdiction and responsibility in first appeal as also the necessity of reasoned orders, we test the impugned judgment. In our considered view, the said judgment does not stand true to these well recognised principles. Points for determination have not been framed; reasons for not framing them have not been provided; nor are there reasons recorded to show how the Court below had erred in law with reference to judicial pronouncements.

9. After all, the findings of the Civil Court were being overturned. Had it been a case of agreement, in view of **Santosh Hazari** (*supra*) general agreement would have sufficed but that is not the case. Granted that the High Court is a higher Court and exercises supervision over the Courts under its jurisdiction, but it too is first and foremost a Court of law. If orders such as these are permitted to stand, it sends a wrong message of the judgments of the Civil Courts/Trial Courts being able to be set aside without due effort and application of mind. That, needless to say, would be a grave error.

10. The least that could have been expected of the Court was to discuss, what it termed as “*extraneous consideration*”, after referring to the evidence as adduced by the parties. All that was done was to extract the reasoning of the civil court and by way of a mere observation that the Court did not understand the actual dispute, the reasoning of the Court below was sought to be brushed aside. However erroneous the reasoning of the Civil Court may be, the Appellate Court while in a correcting course, which is its duty, is expected to do so by giving its own reasons for what it believes to be the correct application of law as laid down by this Court or as provided by the statute.

11. In this context let us deal, albeit briefly, with what a Court is required to do when it is confronted with the question of genuineness of the *Will*. It has to be proved like any other document except for additional requirements under ISA. To restate, the Civil Court had refused to accept the *Will* and the High Court as the First Appellate Court was to

decide on both questions of fact and law. The requirements below are in the light of Section 67, 68 of the Evidence Act 1872²⁵ and Section(s) 59 and 63 of ISA.

- (1) Since the proving of the *Will* is necessarily an event after the death of the testator there is a certain level of sanctity that is attached to the same;
- (2) If the *will* has been signed by the testator, the same has to be established according to Section 67 IEA with recourse to Section 45 and 47 thereof, if required;
- (3) The *will* in order for it to be proved to be the last *will* of testator, has to be attested in accordance with Section 63 ISA either by signing/affixing his mark or signed by a third party upon his direction and in his presence in which situation not one but two attesting witnesses would be required to be examined;
- (4) The testator must be of sound mind within the meaning of Section 59 of ISA and it has to be proved accordingly;
- (5) At least one attesting witness has to be examined in court to prove its execution;
- (6) Three questions need to be asked by the Court and the answer so produced should be to the satisfaction of a prudent mind. Mathematical precision is not to be looked for. They are: **(a)** has the testator signed the *Will*?; **(b)** Did he/she understand the nature? ; and **(c)** the effect of the dispositions in the *Will*; and **(d)** Did he /she put his/her signature on the *Will* knowing what it contained?

[See: *H. Venkatachala Iyengar v. B.N. Thimmajamma*²⁶; *Meena Pradhan v. Kamla Pradhan*²⁷; *Parvathi Nairthi (Dead) and Ors. v. Laxmi Nairthy (Dead) Through Lrs. and Ors.*²⁸

The High Court ought to have in its judgment discussed the above aspects, more so, because it took a view contrary to the Court below. Had it done so, its conclusion that the judgment impugned before it was erroneous, would have been far more palatable. The attitude to be adopted by appellate Courts should be that of a friend, philosopher and a guide rather than wielding the heavy-handed baton of superior authority pointing out errors committed by its underlings.

12. Let us now turn to the last part of the impugned order where the Principal Sub Judge of the Principal Sub Court, Thrissur, had been directed to be sent for training. We only wonder whether the learned Single Judge had kept in mind the principles in *State of U.P. v. Mohd. Naim*²⁹, which are reproduced as under:

“11. ...If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is

²⁵ IEA

²⁶ 1958 SCC OnLine SC 31

²⁷ (2023) 9 SCC 734

²⁸ 2026 INSC 521

²⁹ 1963 SCC OnLine SC 22

necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”

(emphasis supplied)

And also in **S.K. Viswambaran v. E. Koyakunju**³⁰, where it has been observed:

“...It is indeed regrettable that the High Court should have lightly passed adverse remarks of a very serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to Respondents 2 and 3 in the petition filed by them for expunction of adverse remarks made against them.”

We may only observe that in yet another instance of dealing with disparaging remarks one of us (Sanjay Karol, J.) had the occasion to lay down the following principles in **State of Punjab v. Shikha Trading Co.**³¹:

“**19.** The three principles laid down in *Naim* [*State of U.P. v. Mohd. Naim*, 1963 SCC OnLine SC 22 : AIR 1964 SC 703] deal with what is required of the court, prior to, finding it fit to pass adverse remarks. **19.1.** It has been reasserted time and again that remarks adverse in nature, should not be passed in ordinary circumstances, or unless absolutely necessary which is further qualified by, being necessary for proper adjudication of the case at hand [*Niranjan Patnaik v. Sashibhusan Kar*, (1986) 2 SCC 569 : 1986 SCC (Cri) 196 (two-Judge Bench); *Abani Kanta Ray v. State of Orissa*, 1995 Supp (4) SCC 169 : 1996 SCC (L&S) 175 (two-Judge Bench); *A.M. Mathur v. Pramod Kumar Gupta*, (1990) 2 SCC 533 (two-Judge Bench).]

19.2. Remarks by a court should at all times be governed by the principles of justice, fair play and restraint [*Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi*, (1987) 1 SCC 227 (three-Judge Bench)]. Words employed should reflect sobriety, moderation and reserve. *K.G. Shanti* [*K.G. Shanti v. United India Insurance Co. Ltd.*, (2021) 5 SCC 511 : (2021) 2 SCC (L&S) 66]

19.3. It should not be lost sight of and per contra, always be remembered that such remarks, “due to the great power vested in our robes, have the ability to jeopardise and compromise independence of Judges”; and may “deter officers and various personnel in carrying out their duty”. It further flows therefrom that “adverse remarks, of serious nature, upon the character and/or professional competence of a person should not be passed lightly”. *E. Koyakunju* [*S.K. Viswambaran v. E. Koyakunju*, (1987) 2 SCC 109 : 1987 SCC (Cri) 289]”

13. Consequently, the impugned judgment and order dated 30.11.2022 in RFA No.298 of 2019 on the whole, and the direction against the learned Principal Sub Judge of the Principal Sub Court, Thrissur, are set aside. The first appeal is restored to the file of the High Court of Kerala, to be heard afresh leaving all contentions open for the parties to agitate.

Appeal is allowed accordingly. In the circumstances, however, there shall be no order as to costs.

Pending application(s) if any, shall stand disposed of.

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³⁰ (1987) 2 SCC 109

³¹ (2023) 20 SCC 113