IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 4TH DAY OF JANUARY 2024 / 14TH POUSHA, 1945

RFA NO. 197 OF 2013

AGAINST THE JUDGMENT AND DECREE IN OS 27/2011 OF II ADDITIONAL DISTRICT COURT,ERNAKULAM

APPELLANT/DEFENDANT NO.3:

PREMAKUMARI.R.

BY ADVS.G.KRISHNAKUMAR
K.A.ABDUL NISTAR
P.M.NASEEMA
B.S.SURAJ KRISHNA

RESPONDENTS/PLAINTIFFS & DEFENDANTS 1,2 AND 4 TO 6:

* 1 O.K.SIVASANKARA PILLAI (DIED)

2 S.THANKAPPAN PILLAI

3 S.V.SANTHAKUMARI,

4 S.SAKUNTHALA

5 STATE BANK OF TRAVANCORE
KALOOR BRANCH, KALOOR - 17, ERNAKULAM,
REPRESENTED BY THE BRANCH MANAGER.

6 SYNDICATE BANK
ALAPPUZHA BRANCH, ALAPPUZHA, REP. BY
THE BRANCH MANAGER - 688 001.

7 STATE BANK OF TRAVANCORE
ALAPPUZHA MAIN BRANCH, ALAPPUZHA, REP. BY THE
BRANCH MANAGER - 688 001.

ADDL. 8 JALAJA, AGED 74 YEARS,

" 9 SUJA,AGED 54 YEARS,

" 10 SYAM, AGED 50 YEARS,

*** (LEGAL HEIRS OF DECEASED R1 ARE IMPLEADED AS ADDITIONAL R8 TO R10, VIDE ORDER DATED 3.8.2020 IN I.A.NO.2/2020.)**

BY ADVS.
SRI.KAYALATT KUTTYKRISHNAN
GOVERNMENT PLEADER SRI.T.JAYAN
SMT.P.USHAKUMARI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

JUDGMENT

This appeal arises from the judgment and decree dated 15.9.2012 passed by the II Additional District Court, Ernakulam, in O.S.No.27 of 2011. The proceedings were initiated under Section 276 of the Indian Succession Act 1925. The defendants resisted the original petition denying the execution of the Will, and thus, the proceedings were converted into a suit invoking Section 295 of the Indian Succession Act. The dispute in this matter centres around the existence, execution and validity of a Will stated to have been executed by Valliyamma @ O.K.Valliyammal.

The relevant pleadings

Plaintiffs

2. Smt.Valliyamma died on 16.8.2010. Her husband Sri.A.Thankappan pre-deceased her. His date of death is 20.12.1988. Late O.K.Valliyammal was a Confidential Assistant in the Judicial Department. She settled at Cheranelloor. While residing there, on 3.6.2010 she executed a Will. It was attested by Sri.T.A.Thomas and

M.Elayaperumal. The plaintiffs are the legatees under the Will. Late Valliyamma executed the Will voluntarily with her own free will. As per the Will, she appointed plaintiff No.1 as the executor of the Will.

Defendants

3.The late Smt.O.K.Valliyammal did not execute a Will as pleaded. After the death of her husband she had been residing in Thiruvananthapuram along with Smt.Rajamma, who was the sister of her husband. Later, she shifted her residence to YWCA, Ernakulam. She resided at Sree Ramakrishna Asramam for eight years. From there she went to the house of plaintiff No.1 at Cheranelloor. Plaintiff No.1 would have coerced Valliyamma to execute the Will. The Will is a product of undue influence and fraud. The late Valliyamma did not put her signature in the Will projected. It is quite unnatural that the testator divested the properties in the name of the plaintiffs alone. The defendants are the legal heirs of the late O.K.Valliyammal. The late Valliyammal had no intention to execute a Will. She had no mental fitness to execute such a Will. Plaintiff No.1 withdrew huge amounts from the deposits in the name of the late Valliyamma.

4. The trial Court framed the following issues:-

1. Did late Valliammal execute the Will dated 3.6.2010 ?
2. Is Will dated 3.6.2010 a genuine Will ?

3. Whether probate in favour of the 1st plaintiff as claimed is liable to be granted ?
4. What shall be the order as to costs ?

Evidence

5. PWs 1 to 3 were examined, and Exts.A1 to A3 were marked on the side of the plaintiffs. Ext.X1 was marked as Court exhibit.

The findings of the court below

(1) The plaintiffs succeeded in proving the existence, execution and validity of the Will.

(2) The plaintiffs are, therefore, entitled to the certificate of probate as prayed for.

6. Defendant No.3 challenges the decree and judgment passed by the trial Court.

Submissions

7. The learned counsel for the appellant/defendant No.3 submitted the following:-

1) Ext.A2 Will has not been duly tendered in evidence.

2) The plaintiffs failed to establish the due execution of the Will in terms of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act.
3) The following suspicious circumstances surrounding the execution of the Will have not been satisfactorily explained by the plaintiffs:-
   a) The testator excluded the natural legal heirs.

b) Plaintiff No.1 had active involvement in the creation of the Will.
c) The testator died almost two months after the alleged execution of the Will.
d) Ext.A2 Will remained in the custody of plaintiff No.1.
e) Plaintiff No.1 had withdrawn cash using the ATM Card issued in the name of the testator after her death.

4) Both the attesting witnesses were not examined by the propounder.

5) The Court below wrongly put the burden on the defendants.

8. The learned counsel for the respondents/plaintiffs submitted the following:-

The plaintiffs successfully established the execution of the Will. The plaintiffs removed the suspicious circumstances projected by the defendants.

9. The points that arise for consideration are:

(i) Have the plaintiffs established the existence, execution and validity of the alleged Will ?

(ii) Have the plaintiffs satisfactorily explained the suspicious circumstances projected by the defendants ?

(iii) Do the impugned judgment and decree require interference ?

10. ExtA2 is the Will executed by Valliyamma on 3.6.2010. It is pleaded by the plaintiffs that the testator on her own executed Ext.A2 Will in the presence of PWs 2 and 3 and another attesting witness.

11. The challenge of the defendants is that the late O.K.Valliyammal had no intention to execute such a Will and that the Will in question is the product of fraud, undue influence and coercion.

12. Sri.O.K.Sivasankara Pillai/Plaintiff No.1 gave evidence as PW1. He stated that he saw Ext.A2 Will on 6.8.2010, the date on which Valliyamma had left for Alappuzha. He further stated that while leaving for Alappuzha Valliyamma had entrusted the Will, putting it in an envelop to him and represented to him that he should not open the same. PW3 knew the contents of the Will after the post funeral functions of Valliyamma. On the side of the plaintiffs, PWs 2 and 3 were examined to prove the execution of the Will. PW3, along with one T.A.Thomas attested to the execution of the Will. PW2 stated that the late Valliyamma instructed him to prepare a Will, and as per her instructions, he prepared the same and brought it to her on 3.6.2010 at her house at Cheranelloor. PW2 is not a licenced document writer. He stated that after his retirement as the Secretary of a Co-operative Society, he used to prepare documents like Will etc. for others. He signed Ext.A2 in the capacity as a scribe as well.

13. PW3 was a tenant in the house of late O.K.Valliayammal. PW3 stated that Valliyammal asked him to come to

witness the execution of her Will. He reached her house on 3.6.2010. Sri.T.A.Thomas was there. PW2 also came there. They were sitting in the drawing room at the house of late O.K.Valliyammal who executed the Will in their presence. He deposed that late Valliyamma signed all pages of the Will followed by Sri.T.A.Thomas and himself signed the Will as witnesses. He further stated that PW2 subsequently signed the Will.

The law relating to the proof of execution of a Will

14. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 stipulate the proof required for a Will. As per Section 63 of the Indian Succession Act, 1925 the due execution of the Will consists the following :-

(1) The testator should sign or affix his mark to the Will.

(2) The signature or mark of the testator should be so placed that it should appear that it was intended to give effect to the writings as a Will.

(3) Two or more witnesses should attest to the Will. Each of the said witnesses must have seen the testator signing or affixing his mark on the Will and each of them should sign the Will in the presence of the testator.

15. Section 68 of the Indian Evidence Act mandates that a

Will shall not be used as evidence until one attesting witness at least has been called to prove its execution.

16. In **Venkatachala Iyengar** v. **B.N.Thimmajamma (AIR 1959 SC 443)**, the Supreme Court laid down the following propositions while dealing with the nature and standard of evidence required to prove a Will:-

> 1. Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.
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> 2. Since S.63 of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by S.68 of the Evidence Act, 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.
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> 3. Unlike other documents, the Will speaks from the death of the testator and therefore the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity, in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.
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> 4. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing

> and in such cases the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

17. In **Venkatachala Iyengar** (supra), the Apex Court enumerated the following circumstances to be relevant for determination of the existence of suspicious circumstances:-

(i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will.

(ii) When the disposition appears to be unnatural, improbable or wholly unfair in the light of relevant circumstances.

(iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.

18. In **Rani Purnima Debi** v **Kumar Khagendra Narayan Deb (AIR 1962 SC 567)** referring to **Venkatachala Iyengar** (supra), on the principles governing the proof of execution of a Will the Supreme Court observed thus:-

> "5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by this Court in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma* [1959 Supp (1) SCR 426] . It was observed in that case that the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however,

> there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

19. In **Indu Bala Bose** v. **Mahindra Chandra Bose [(1982) 1 SCC 20]** the Supreme Court observed that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious

circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free, the Supreme Court added.

20. **Indu Bala Bose,** the Supreme Court further observed that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.

21. In **Jaswant Kaur** v. **Amrit Kaur [(1977) 1 SCC 369],** the Supreme Court enunciated the principles for dealing with a Will shrouded in suspicion. The Supreme Court observed thus:-

> "9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

22. In **Uma Devi Nambiar** v. **T.C.Sidhan [(2004) 2 SCC 321],** the Supreme Court held that mere exclusion of the natural heirs or giving of lesser share to them will not be considered to be a suspicious circumstance.

23. A Constitution Bench of the Supreme Court in **Shashi Kumar Banerjee** v. **Subodh Kumar Banerjee (AIR 1964 SC 529),** on the law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a Will, observed thus:-

> "…. The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the

> circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations."

24. In **P.P.K.Gopalan Nambiar** v. **P.P.K.Balakrishnan Nambiar (1995 Supp (2) SCC 664)**, the Supreme Court held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. The Court further held that if the propounder succeeds in removing the suspicious circumstances, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations.

25. In **Rabindra Nath Mukherjee** v. **Panchanan Banerjee [(1995) 4 SCC 459)** the Supreme Court observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind the execution of the Will is to

interfere with the normal line of succession, and so, natural heirs would be debarred in every case of Will and it may be that in some cases they are fully debarred and in some cases partly.

26. While dealing with a contention that both the attesting witnesses were required to append their signatures simultaneously, in **Mahesh Kumar** v. **Vinod Kumar [(2012) 4 SCC 387],** the Supreme Court held that Section 63(c) of the Indian Succession Act, 1925 does not contain any such requirement and it is settled law that examination of one of the attesting witnesses is sufficient.

27. In **Leela Rajagopal** v. **Kamala Menon Cocharan [(2014) 15 SCC 570],** the Supreme Court observed that the judicial verdict in relation to a Will and suspicious circumstances shall be on the basis of holistic view of the matter with consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature. The Court declared that it is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it.

28. In **Shivakumar** v. **Sharanabasappa [(2021) 11 SCC 277)**, the Supreme Court after analysing the relevant precedents has

summarised the principles governing the adjudicatory process concerning proof of a Will as follows:-

> **"12........................**
> **12.1.** Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.
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> **12.2.** Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.
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> **12.3.** The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.
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> **12.4.** The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.
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> **12.5.** If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus

> of the propounder to remove all reasonable doubts in the matter.
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> **12.6.** A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".
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> **12.7.** As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.
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> **12.8.** The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?
>
> **12.9.** In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will."

29. In **Kavita Kanwar** v. **Pamela Mehta [(2021) 11 SCC 209],** after analysing the scores of other decisions of the Supreme

Court, it was held that the probate proceeding is ultimately a matter of conscience of the court and irrespective of whether any plea in opposition is taken or not, a propounder of Will is required to satisfy the conscience of the court with removal of all the suspicious circumstances. In **Kavita Kanwar** the Supreme Court further observed thus:-

> "**28.** There is no doubt that any of the factors taken into account by the trial court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded will. That is to say that, the will in question cannot be viewed with suspicion only because the appellant had played an active role in execution thereof though she is the major beneficiary; or only because the respondents were not included in the process of execution of the will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the appellant; or only because one of the attesting witnesses being acquaintance of the appellant; or only because there is no evidence as to who drafted the printed part of the will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the appellant; or only because of any other factor taken into account by the courts or relied upon by the respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the court is not satisfied that the will in question truly represents the last wish and propositions of the testator, the will cannot get the approval of the court; and, other way round, if on a holistic view of the matter, the court feels satisfied that the document propounded as will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the will shall not be disapproved merely for one doubtful circumstance here or

another factor there.”

I may now proceed to consider the facts and circumstances brought out in evidence on the touchstone of the principles discussed above.

30. The evidence on the plaintiffs’ side, especially the oral evidence of PWs 2 and 3 corroborated by Ext.A2, satisfies the requirement of Section 63(c) of the Act.

31. Challenging the impugned judgment the learned counsel for the appellant/defendant No.3 raised a contention that the plaintiffs failed to duly tender the Will in evidence. His contention is that PWs 2 and 3 did not identify the Will in the Court. It is submitted that the affidavit filed in lieu of the chief examination is not sufficient proof to satisfy the requirement of Section 63(c) of the Act. Order 18 Rule 4 of the Code of Civil Procedure mandates that the examination-in-chief of a witness shall be on affidavit, and copies thereof shall be supplied to the opposite party who calls him for evidence. The proviso to Rule 4 says that where documents are filed, and the parties rely upon the documents, the proof and admissibility of such documents, which are filed along with the affidavit shall be subject to the orders of the Court. Rule 4 of Order 18 of CPC was introduced by Act 46 of 1999 as an exception to Section 1 of the Indian Evidence Act, which says that the

Indian Evidence Act 1872 is not applicable to affidavits presented to any Court or officer. Rule 4 of Order 18 is a rule of evidence. The Court below recorded that the witnesses admitted the contents of the proof affidavit. When the witnesses swore to the proof affidavit, they referred to Ext.A2 and signed the affidavit. The necessary inference is that the witnesses affirmed the proof affidavit and signed the same on seeing Ext.A2 Will. Therefore, there is no requirement for the witnesses again to identify Ext.A2 in the court during examination and failure of their identification again in the Court cannot have the effect of discarding the evidence tendered by way of affidavit in lieu of chief examination. It is also relevant to note that the defendants had not challenged this aspect in the cross-examination of PWs 2 and 3. Evidence of PWs 2 and 3 almost remains unchallenged on the aspect of attestation. I find no merit in the contention of the appellant/defendant No.3 that the Will was not duly proved on the ground that the witnesses did not identify the Will in the box.

32. Another contention of the appellant is that the two attesting witnesses were not examined on the plaintiffs' side. It is trite that examination of one of the attesting witnesses is sufficient to prove a Will [See **Mahesh Kumar** (supra)].

33. Now, coming to the suspicious circumstances projected by the appellant. The testator had no issues. Her husband pre-deceased her. Admittedly, she was staying with plaintiff No.1. She executed Ext.A2 Will while residing at the residence of plaintiff No.1. Defendant No.3 has a case that she resided at her house at Thathampilly. PW1 gave evidence that she went to Thathampilly for medical treatment at Sahrudaya hospital. Plaintiff No.1 gave evidence that the testator had been taking treatment from that hospital for a long time, and only for that reason she went there. While undergoing treatment there she died, that is two months after the execution of Ext.A2 Will. PWs 1 to 3 gave consistent evidence that the testator had a sound disposing state of mind. No materials have been produced to show that she was suffering from serious ailments or mental disability. The plaintiffs could satisfactorily explain the suspicion surrounding the mental condition of the testator.

34. Another challenge is that a lion portion of the estate of the deceased was given as per Ext.A2 to plaintiff No.1, excluding the natural legal heirs. It has come out in evidence that the testator had been residing with plaintiff No.1. Deprivation of natural heirs should not always be treated as a suspicious circumstance as the whole idea

behind the execution of the Will is to interfere with the normal succession. [See **Rabindra Nath Mukherjee** (supra)].

34. The appellant raised another contention that plaintiff No.1 had faced a criminal complaint on the allegation that he withdrew money from the account maintained by the testator after her death. It has come out in evidence that the complaint was referred as false by the investigating agency.

35. The appellant has raised a further contention that Ext.A2 Will is the product of fraud, undue influence and coercion. The trial Court has noted that the defendants did not allege the kind of fraud and the nature of coercion or undue influence exerted on the testator. As per Rule 4 of Order 6 of CPC, the party relying on misrepresentation, fraud, undue influence, etc. has to give the particulars in the complaint and to establish that a high degree of evidence is required. Fraud, like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt and a finding as to fraud cannot be based on suspicion or conjecture. The allegation of fraud, undue influence and coercion must be set forth in full particulars and not vaguely. When allegations are made in a vague and sweeping manner, the Court cannot act on them for lack of specific

pleadings even if the allegations are worded in very assertive language. It is also trite that if the pleadings are vague and not specific, no amount of evidence can salvage the position (See: **United India Ins. Co. Ltd.** v. **Andrew Vivera (1989 (1) KLJ 614)**. In the present case, the defendants failed to plead and prove the fraud, undue influence and coercion.

36. An individual factor as a suspicious circumstance cannot act as a circumstance to doubt the genuineness of a Will. The Court shall have to take into account the quality and nature of every fact, the cumulative effect and impact of all of them appreciated on a holistic view is the test to see that the Will indeed signifies the last free wish and desire of the testator and that it is duly executed in accordance with law. In the present case, the "suspicious" circumstances projected are only normal. Resultantly, I hold that the plaintiffs could rule out all the suspicions shrouded upon the execution of the Will. The points are answered accordingly against the appellant.

In the result, the Regular First Appeal stands dismissed. The parties are directed to suffer their respective costs.

Sd/-
K.BABU
Judge

TKS