Karnataka High Court K.R. Rajalakshmi Devi (Deceased) ... vs K.R. Chandrasekhar on 12 June, 1997 Equivalent citations: 1998 (3) KarLJ 634 Bench: C Ullal JUDGMENT 1. This appeal is directed against the judgement and decree dated 6-4-1991 passed in O.S. No. 3 of 1987 on the file of the Civil Judge and Judicial Magistrate First Class, Chintamani. In passing the said Judgment and decree the Civil Judge was pleased to decree the suit in part. 2. I heard the learned Counsel for the appellants Sri P. Subba Rao and the learned Counsel for the respondent Sri Padubidri Raghavendra Rao. I have also perused the case records including the case records of the Court of the Civil Judge and JMFC, Chintamani, hereinafter referred to for convenience as the Civil Judge. 3. The brief facts of the case are as follows:– The appellants herein are the L.Rs of the original plaintiff by name K.R. Rajalakshmi Devi. The appellants 1 and 2 are her sons and the appellant 3 is her husband. The original plaintiff-Rajalakshmi Devi died on 26-12-1987 during the pendency of the suit. She had filed originally O.S. No. 5 of 1973 before the Court of Civil Judge, Kolar, as against her brother Chandrashekar, the respondent herein. When she had so filed the suit, the appellant 3 herein was arrayed as defendant 2. In the meantime, the said O.S. 5 of 1973 on the file of the Civil Judge at Kolar was transferred to the Civil Judge, JMFC at Chintamani, whereupon, the said suit was renumbered as O.S. No. 3 of 1987. When the suit was pending before the said Court, the original plaintiff-Rajalakshmi Devi died and therefore the appellants herein were brought as her L.Rs and in the process, the original defendant 2 stood transposed as the plaintiff 3 and therefore in the instant appeal, the L.Rs of the original plaintiff are the appellants. 4. The plaint allegations are as hereunder:– The original plaintiff had filed a suit as against the respondent and the appellant 3 herein for partition and separate possession of four items of the immovable properties, more fully set out in Schedule 'A' to plaint and further for partition and separate possession of suit Schedule 'B' movable properties. 5. The suit Schedules 'A' and 'B' properties have been set out in the plaint as hereunder:– "Schedule 'A' 1. Eleven shops with vacant sites of eastern and western sides of the shops built of S.No. 11/1 (since alienated) and bearing municipal No. 20/B (II Division) 83 sub-Nos. 1 to 11, bounded on the East by Appaiah's vacant sites, West by Chelur Road, North by shop belonging to Muddalapalli Reddappa, South by site of S.S. Nanjundaramasetty. 2. Thirteen shops built on S.No. 73 sub-2 since alienated with vacant site on the eastern side bearing municipal No. 118, sub-Nos. 1-13 in II Division, Chelur Road, Chintamani Town (Sonnasettihally) bounded on the east: Chelur Road, west by Chikka Venkataswamy's buildings, north: K. Srinivasaiah's vacant land and buildings, south by Chikka Venkataswamy's buildings. 3. Twenty-five shops with compound with big building in Chintamani town constructed on S.Nos. 73/2 and S.No. 14 since alienated and now numbered as municipal No. 112 sub-Nos. 1 to 30 bounded on the East : by Chelur road, West by Thope No. 10, North by Nekkundi boundary, South by Srinivasaiah's land and buildings. There are two rooms in this item built on the southern side within the compound, with well and pumpset and power house with mulberry cultivation in the vacant land within the compound. 4. Residential building in N.R. Extension, Chintamani

Town Municipal No. 107 in I Division bounded on the East by : Chitroji Rao's building West by : Kumbaria Gopalakrishnaiah's land North by : Conservancy Road South by : Municipal Road. Schedule 'B' 1. Furniture:– Two Godrej Almirahs Rs. 1,000/- One Iron safe Rs. 1,500/- One sofa set and 7 cots Rs. 1,400/- One dining table with chairs Rs. 400/- Four folding chairs Rs. 100/- Rattan chairs 12 Rs. 200/- Wooden chairs 12 Rs. 120/- Tables 5 Rs. 300/- Carpets 4 (Woollen) Rs. 300/- Benches 2 Rs. 50/- Household utensils consisting of brassware, silverware and stainless silver wares, two copper boilers and other utensils worth Rs. 5,000/-. 2. Cash in the hands of the 1st defendant, Rs. 5,000/- 3. Gold jewels in the custody of the 1st defendant worth Rs. 12,000/- 3(a) Water pipes 1/2" and 3/4" 21 lengths, Rs. 800/-". 6. The appellant 3 had been arrayed as defendant 2 in the original suit for the reason that he was the Manager of the properties, no matter that he was also the husband of the original plaintiff. 7. The original plaintiff had claimed in her suit that the suit Schedules 'A' and 'B' properties originally belonged to her father one K. Ramaswamaiah and that the said properties were acquired by him by dint of his own hard labour and having started kerosene business in the beginning in a very humble way, he flourished very well in the business and thereafter he had also acquired a petrol dealers licence and because of that he had acquired vast properties as set out in the schedule to plaint. That the husband of the original plaintiff, the appellant 3 herein was brought up by the said Ramaswamaiah at his very young age as he was issueless at the early part of his married life and that it is thus, the appellant 3 had closely associated with Ramaswamaiah in his business ventures and later he started acting as his manager. That Ramaswamaiah, had the original plaintiff-Rajalakshmi Devi and the respondent herein as the only issues born to his legally wedded wife by name Narayanamma. During the lifetime of Ramaswamaiah, he got married the original plaintiff-Rajalakshmi Devi with the said Krishnaiah, the appellant 3 herein. That Ramaswamaiah died intestate on 21-11-1965 leaving behind him the original plaintiff-Rajalakshmi Devi, the respondent herein and his widow by name Narayanamma, then living to succeed to his estate. That subsequent to the death of Ramaswamaiah, the appellant 3 herein, the husband of the original plaintiff carried on the family business as the manager of the business under the direction of widow Narayanamma and further, his son, the respondent herein. That the widow of the original owner Ramaswamaiah, Narayanamma also died on 7-1-1971 intestate and with her demise, the original plaintiff and the respondent herein had to succeed to the suit Schedules 'A' and 'B' properties equally. That due to the misunderstanding between the original plaintiff-Rajalakshmi Devi and her husband, Krishnaiah, the original defendant 2 (the appellant 3 herein) on the one side and the respondent herein, the original plaintiff-Rajalakshmi Devi was forced to file the suit for partition and separate possession of the suit Schedules 'A' and 'B' properties. 8. The respondent herein and the original defendant 2, the appellant 3 herein had filed their independent written statements before the Civil Judge. The respondent herein had also amended his written statement after some time and on allowance of an application to amend the written statement. The contentions of the respondent therein are to the following effect. 9. The relationship of the

parties was admitted. However, all the contentions of the original plaintiff were denied and challenged by the respondent. He further denied that the original plaintiff was entitled to for any share in the suit schedule properties. He further contended that the suit schedule properties were the joint family property of himself and his father and thus, he was entitled to succeed to the suit schedule properties by survivorship. The respondent 1 further contended in his written statement that his father Ramaswamaiah had executed an unregistered Will dated 20-12-1964 filed along with his written statement. According to him, all the suit schedule properties barring item No. 3 in suit Schedule 'A' property were bequeathed to him exclusively and that the said item No. 3 of the suit Schedule 'A' property was bequeathed by their father in the name of original plaintiff and the respondent herein jointly. He had further contended that under the Will, both the original plaintiff as well as the respondent herein are directed to pay a sum of Rs. 50/- to the widow of the original owner by name Narayanamma (the mother of the original plaintiff and the Respondent herein). He had further contended in the written statement that he had no objection for partition of item No. 3 of the suit Schedule 'A' property consisting of 11 shops bequeathed jointly to the original plaintiff and the respondent. 11. He had also contended in the written statement that the Will was acted upon by him as well as the original plaintiff and that it is for that reason, 7 shops out of 11 shops in suit item No. 3 of suit Schedule 'A' property was rented out to one Ashwath Narayana under a registered lease deed dated 3-10-1970 marked as Ex. D-1 on a monthly rental of Rs. 275/- and further that two more shops were also leased by both of them to the said Ashwath Narayana on a monthly rental of Rs. 70/- and that in a HRC proceedings in No. HRC 14 of 1985 on the file of the learned Munsiff, Chintamani, the appellants herein had filed an application to implead themselves as the petitioners. Thus, he pleaded that the Will at Ex. D-2 was very well within the knowledge of the original plaintiff and as such was also acted upon. 12. It was further pleaded by the respondent in his written statement that since the death of Ramaswamaiah, the original plaintiff, her husband, the appellant 3 herein continued to stay in the family and was looking after the entire family affairs since the respondent was just young and the appellant 3 had acted as a ward to him. He had further pleaded that the appellant 3 was looking after the accounts of the business, collection of rents, correspondence, etc., and that the respondent reposed total trust and confidence in the appellant 3 and in obedience thereof, he had signed various papers and documents at the instance of the appellant 3. That after the death of his mother on 7-12-1971, the appellant 3 with mala fide intention took undue advantage of his tender age and inexperience in life and the appellant 3 therefore controlled and dominated the affairs of the family including the affairs of the family business. He had further contended that the original plaintiff and her husband, the respondent 3 herein removed gold, cash, account books and other valuable documents together with other movables besides creating liabilities for the respondent. He had further averred that the appellant 3 had stopped the petrol bunk business and finally abandoned the respondent to his destiny. 13. That the original plaintiff had resorted to suit at the instance of the appellant 3

herein, only to coerce the respondent to part with more properties. He had also denied that the original plaintiff and the respondent herein were in joint possession and enjoyment of the suit schedule properties. He had further contended that the appellant 3 herein was not at all a necessary party to the original suit to be arrayed as the defendant 2 to suit. 14. On the above pleadings, the respondent had prayed that the suit be dismissed. However, he had added a rider to say that he had no objection to give one half of the share in 11 shops in suit Schedule 'A' immovable properties. 15. That when the respondent herein got amended his written statement to take up new pleas, the appellants herein as the L.Rs of the original plaintiff had also filed a rejoinder thereto contending therein as follows:– (i) They denied that Ramaswamaiah had executed a Will as claimed by the respondent; that the respondent had forged and created a Will subsequent to filing of the suit by the original plaintiff. That earlier to filing of the suit in the year 1970, the respondent had filed number of civil suits and he never referred to the alleged Will. They further denied that the Will was ever acted upon. (ii) Without prejudice to the above contentions, the appellants in their rejoinder further contended that the shops leased under the registered lease deed dated 3-10-1970, Ex. D-1 executed by the original plaintiff and the respondent herein was in the capacity of joint owners thereof and not to act upon the alleged Will as contended by the respondent. They further denied that they impleaded themselves in HRC proceedings referred to above to act upon the Will in question. They also contended that after the death of Ramaswamaiah the original plaintiff and the respondent herein inherited the properties of late Ramaswamaiah equally and it is thus, the registered lease deed Ex. D-1 came to be executed jointly by the original plaintiff and the respondent herein in the name of Ashwathanarayana. They therefore prayed that the suit be decreed as prayed for. 16. Based on the pleadings, the learned Civil Judge had framed as many as 12 issues. The same are as hereunder:–"1. Whether the schedule properties are the self-acquired properties of K. Ramaswamy as alleged by the plaintiff? 2. Whether the suit schedule properties are the joint family properties of the 1st defendant and his father? 3. Whether the plaintiff is entitled to any share? If so what is her share? 4. Whether the 1st defendant proves that the late K. Ramaswamaiah has executed the Will dated 20-12-1964 and has bequeathed the properties described therein and a portion of item 3 to the plaintiff? 5. Whether the second defendant is an unnecessary party to the suit? 6. Whether the plaintiff is not in joint possession of the plaint schedule properties? If so, whether the valuation and Court fee paid is not proper? 7. Whether the valuation and the Court fee has been decided in O.S. No. 28 of 1970 and the same valuation has to be made in this suit? 8. Whether the second defendant has got any claim over the suit schedule properties and whether he is entitled to any relief? 9. To what share if any the plaintiff is entitled to? 10. Whether the plaintiff is entitled for the accounts? 11. Whether the plaintiff is entitled for mesne profits? 12. To what decree?" 17. In support of the respective side of the case, both the sides have produced oral as well as documentary evidence. The appellants have examined 3 witnesses who include the original plaintiff; however her evidence was incomplete. They have also marked as many

as 72 documents as Exs. P-1 to P-72. As against the above, the respondent had examined 4 witnesses –P.Ws. 1 to 4 and marked documents Ex. D-1-lease deed and Ex. D-2 the Will executed by the original testator Ramaswamaiah. 18. On hearing the parties and on appreciation of evidence on record, both oral and documentary, the learned Civil Judge had recorded his findings as hereunder:– "Issue No. 1: As per order Issue No. 2 : As per order Issue No. 3 : As per order Issue No. 4 : As per order Issue No. 5 : As per order Issue No. 6 : As per order Issue No. 7 : As per order Issue No. 8 : As per order Issue No. 9 : As per order Issue No. 10 : As per order Issue No. 11: As per order Issue No. 12 : As per order". 19. The learned Civil Judge had recorded the above finding mainly for the reason that he held that Ex. D-2-Will was proved by the respondent before him and that as per Ex. D-2-Will, the appellants herein are entitled to for one half of the 11 shops in item No. 3 of the suit Schedule 'A' immovable properties and as such, they are entitled to for partition and separate possession of the same and nothing beyond and accordingly, the learned Civil Judge was pleased to decree the suit of the appellants to that extent. 20. The main contention of the appellants herein before the learned Civil Judge was that the Will Ex. D-2 came into existence in suspicious circumstances and therefore, the duty was cast on the respondent to remove such suspicious circumstances and according to them, the respondent had miserably failed to discharge that burden cast on him. The suspicious circumstances according to the appellants are well adverted to by the learned Civil Judge in para 25 of the impugned Judgment. They are:– "1. The Will did not face the light till 17-3-1973. 2. It was not registered. 3. It did not come from the custody of any solicitor or others, but by propounder. 4. It was not produced before any public authority though there were occasions to produce it or referred to it in the Court, municipality and the lease deed dated 3-10-1970. 5. The katha of the properties were not changed by virtue of the Will. 6. Will disinherited Clause I heirs i.e., the mother and the sister. 7. Defendant was getting lion's share in the properties. 8.Testator had close contacts with distinguished personalities at Cnintamani. 9.Will was not acted upon. 10. Estate duty was paid by widow Narayanamma. 11. No Cogent evidence of attestors was produced. 12. It was not proved that it was the last Will of the testator. 13. There was no reason to keep the Will secret. 14. Testator could have stated of the Will to his daughter. 15. The scribe was not a professional writer. 16. Signature of the testator and body contents of the Will were in different ink. 17. Testator would not have used this type of paper. 18. Admitted signatures of the testator were not produced. 19. Defendant should prove that testator had sound and disposing state of mind on the date of the Will. 20. Signature of the testator was forged". 21. The appellants herein have virtually reiterated the above contentions in resorting to the instant appeal before this Court. Sri Subba Rao, the learned Counsel appearing for the appellant vehemently argued that Ex. D-2-Will was executed as long back as on 20-12-1964 according to the respondent, and whereas the same was not produced earlier before any of the Court proceedings, particularly in suits in O.S. No. 92 of 1971 filed before the Munsiff at Kolar and subsequently transferred to the Court of Munisiff and JMFC at Chintamani, renumbered as O.S. No. 419 of 1971, vide

copy of the plaint at Ex. P-31 and P-32, O.S. No. 392 of 1971 also before the Munsiff, Chintamani vide copy of the plaint at Ex. P-33, O.S. No. 12 of 1971 before the Munsiff at Kolar, subsequently transferred to the Court of Munsiff, Chintamani, renumbered as O.S. No. 391 of 1971, vide copy of the written statement in Ex. P-40 and order sheet of the suit in Ex. P-41, in O.S. No. 387 of 1971 on the file of the Court of Munsiff, Chintamani, copy of the plaint at Ex. P-47, in O.S. No. 390 of 1971 before the Court of Munsiff, Chintamani, copy of the plaint at Ex. P-48, O.S. No. 386 of 1971 also before the Court of Munsiff, Chintamani, copy of the plaint at Ex. P-51 and order sheet thereof at Ex. P-53 and further any of the Authorities including the Municipal Authorities for change of khata in respect of properties as set out in Schedule 'A' to suit, more fully demonstrated before the learned Civil Judge in marking extract from the house/land tax assessment list of the Town Municipal Council, Chintamani, produced at Ex. P-1 to P-27. Sri Subba Rao pointedly drew my attention to the fact that the khatas in respect of the said properties at Ex. P-l to P-22 were changed only on 13-12-1972 and that the respondent did not produce the copy of that Will at Ex. D-2 for change of the said khatas at all. 22. Sri Subba Rao further argued that when the original owner-Ramaswamaiah died in the month of November 1965, he left behind his widow Narayanamma, the original plaintiff-Rajalakshmidevi and the respondent herein and that the original plaintiff had died in the year 1987 during the pendency of the suit before the Court below and according to him, there was no good reason as to why the widow Narayanamma was totally disinherited in execution of the Will-Ex. D-2 by the original testator, for, according to him, no explanation is forthcoming either in the Will-Ex. D-2 or for that matter by way of pleading or evidence in the hands of the respondent, the propounder of the Will. He further pointed out that Ex. D-2-Will was executed in a very strange way, written in a very ordinary, thin and plain paper. Furthermore, his submission is that, Ex. D-2-Will was kept in total secrecy for more than 20 years and therefore, according to him, the said circumstance was sufficient to hold that Ex. D-2-Will had come into existence in a totally suspicious circumstance. In support of his argument, Sri Subba Rao had cited before me the following decisions: (a) Harimati Debi and Another v Anath Nath Roy Choudhury, wherein the Calcutta High Court had held that burden of proving an unregistered Will sought to be propounded after a lapse of more than 20 years is on the propounders by removing all manner of doubt and suspicion which are likely to arise, by convincing evidence. In the above decision, the Court held as follows: "Will – Burden of proof – Nature of evidence required – Burden of proving unregistered Will sought to be propounded after a lapse of more than 20 years is on propounders who are required to remove all manner of doubt and suspicion which are likely to arise by convincing evidence. The burden of proving a Will in solemn form is cast upon the propounders. Where an unregistered Will is sought to be propounded after the lapse of more than 20 years it is required that all manner of doubt and suspicion which are likely to arise should be removed by them. But where the evidence adduced is of unsatisfactory nature and the discrepancies therein excite the suspicion of a Probate Court, no probate can be granted unless such suspicion is removed –

Vellaswamy Servai v Sivaram Servai, Ram Gopal v Aipna Kunwar and Baikuntha Nath v Prasannamoyee Debya". (b) Sanjiva @ Sanjiva Bkandary v Vasantha and Others, in the said decision the Division Bench of this Court held as follows: "(B) Will – Suspicious circumstances – Cumulative effect of suspicious circumstances surrounding execution of Will to be considered – Test applicable. HELD: The cumulative effect of the suspicious circumstances surrounding the execution of the Will such as the active participation, unnatural disposition, suppression of the Will for 20 years, the conduct of the propounder of the Will must be taken and then apply the test whether in the circumstances of the case the judicial conscience of the Court is satisfied that the propounder has dispelled all clouds of suspicion with which the execution of the Will is shrouded with". (c) Kalyan Singh v Smt. Chhoti and Others , the decision is on the point of genuineness and proof of a Will and further on the point of failure of plaintiff to remove suspicious circumstance by placing satisfactory evidence on record. The Supreme Court in the said decision held as follows: "(B) Succession Act (1925), Section 61 – Will –Genuineness – Proof – Failure of plaintiff to remove suspicious circumstances by placing satisfactory material on record – Will could be said to be not genuine. A Will is one of the most solemn documents known to law. The executant of the Will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the Court to establish genuineness and authenticity of the Will. It must be stated that the factum of execution and validity of the Will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the Court is not confined only to their testimony and demeanour. It would be open to the Court to consider circumstances brought out in the evidence or which from the nature and contents of the documents itself. It would be also open to the Court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party. The Will in the instant case constituting the plaintiff as a sole legatee with no right whatever to the testator's wife could be said to be unnatural. It casts a serious doubt on genuineness of the Will. The Will has not been produced for very many years before the Court or public authorities even though there were occasions to produce it for asserting plaintiff's title to the property. The plaintiff was required to remove these suspicious circumstances by placing satisfactory material on record. He has failed to discharge his duty. Therefore, the conclusion that the Will was not genuine was proper". (d) Ram Piari v Bhagwant and Others, is a case of disinheritance amongst heirs of equal decree, when no reason for exclusion of the daughter disclosed by the testator – father, the Supreme Court held as hereunder: "(B) Constitution of India, Article 136 – Will – Proof –Finding of fact – Interference – Disinheritance amongst heirs of equal degree – No reason for exclusion of daughter disclosed by testator, a father – Finding of fact as to genuineness of Will by Courts can be interfered with under Article 136. Succession Act (1925), Section 61. R.S.A. No. 974 of 1985 and Civ. Misc. No. 1034-C of 1985, DD: 11-8-1986 (P & H), reversed.

Where the testator, a father executed a Will bequeathing all his property in favour of sons of one daughter who had no sore or sour relations with testator and it was found that even though the testator could sign yet he put his thumb mark on Will and the professional scribe fetched by beneficiary's father admitted that when he reached beneficiary's residence where the Will was executed he found testator covered with quilt with whom he did not talk nor enquire about his health, the finding as to genuineness of Will recorded by the Court by erroneous application of principle of law could be interefered with under Article 136. Anxiety in village to protect landed property or agricultural holdings from going out of family is well known. Even though it cannot be said to be hard and fast rule yet when disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed, then the standard of scrutiny is not the same and if the Courts failed to be alive to it then their orders cannot be said to be beyond review". 23. In citing the above decisions, Sri Subba Rao vehemently argued that all the above decisions are applicable to the instant case in hand, more so, in the circumstances that the respondent did not discharge his burden to remove the suspicious circumstances under which the Will at Ex. D-2 came into existence. 24. Sri Subba Rao further argued that in the instant case in hand, all that the respondent did was to examine himself and two other attestors besides examining the daughter of the scribe in view of the fact that the scribe is stated to have died about 10 or 15 years subsequent to the date of execution of the Will and according to Sri Subba Rao, the learned Civil Judge did not look into the suspicious circumstance and therefore misled himself to disbelieve the case of the appellants and further to believe the case of the respondent. Sri Subba Rao further argued that had the learned Civil Judge applied the 'Armed Chair' Rule, whereby he meant that the learned Civil Judge had to put himself in the place of the testator, he would not have come to the conclusion that Ex. D-2-Will was executed by the testator in the normal course of event. Sri Subba Rao further prayed that this Court as well apply the said 'Arm Chair' Rule and decide the main issue as to the truthfulness or otherwise of the execution of the Will-Ex. D-2 by the original testator-K. Ramaswamaiah. 25. For the aforesaid reasons, Sri Subba Rao prayed that the impugned judgment and decree passed by the learned Civil Judge be set aside and the suit filed by the original plaintiff, the mother of appellants 1 and 2 and husband of the appellant 3 be decreed as prayed for. 26. As against the above argument of the learned Counsel for the appellants, Sri Padubidri Raghavendra Rao while supporting the impugned Judgment and Decree passed by the learned Civil Judge submitted at the outset that there is no merit in the instant appeal filed by the sons and the husband of the original plaintiff. It is the argument of Sri Rao that this Court at the threshhold should remember that the suit Will-Ex. D-2 came to be executed by the testator on 20-12-1964 and that at that relevant point of time, the respondent herein was just a lad being aged hardly about 19 years then and that the entire management of the properties of the original testator was in the hands of the appellant 3 the husband of the original plaintiff and that, management of the family business continued to be in his hand even till 1971, few days earlier to the filing of the suit by his wife. Sri Raghavendra Rao pointedly drew my attention

that the respondent was ill-educated and that he was not at all worldly wise and it is for that reason, not only during the life time of Ramaswamaiah, the original testator, but also subsequent to his death, the appellant 3 continued to manage the affairs of the family and because of that situation, the respondent was not at all in a position to raise any issue much less, an issue to give effect to Ex. D-2-Will, no matter that appellant 3 and further the original plaintiff, his wife were very well aware with regard to the execution of Ex. D-2-Will by the original testator giving bigger slice in the properties to the respondent. 27. The learned Counsel for the respondent further argued that all that has to be looked into by this Court is whether the suit Will-Ex. D-2 is the genuine Will as contended by the respondent or the same was got up or forged by the respondent as contended by the original plaintiff and subsequent to her death by the appellants herein. It is in the argument of Sri Rao that Ex. D-2-Will came into existence in a very natural way by the testator-K. Ramaswamaiah and that the propounder of the Will, the respondent herein had in fact successfully proved that Ex. D-2-Will was very naturally executed and there was no foul play in it. While taking me through the evidence adduced by the respondent before the learned Civil Judge, Sri Raghavendra Rao argued that the respondent had examined two of the attestors of the Will, one Neelam Lakshman Rao-D.W. 2 and another by name Rangappa-D.W. 4, when the other attestor by name K. Annaiah and the scribe by name Ramanujam Iyengar were no longer available in view of the fact that they are dead and gone. He further argued that, to identify the handwriting of the original scribe, the respondent had also examined his daughter hy name A. Saroja-D.W. 3. He further argued that there was not much discrepancy in the evidence of these witnesses to doubt that Ex. D-2-Will was not a genuine Will. Yet another point Sri Raghavendra Rao argued is that, when the original plaintiff and the appellants herein had set up the theory that suit Will-Ex. D-2 was not genuine and got-up one, had not even challenged the signature of the testator. He further pointed out that it is nobody's case that the signature of the testator-K. Ramaswamaiah as at Ex. D-2a in Ex. D-2 was forged. Sri Raghavendra Rao pointed out that appellant 3 examined as P.W. 3 had in fact deposed before the learned Civil Judge that at the time of execution of Ex. D-2-Will, Sri Rao argued that there was total hollowness in the argument of the other side to say that the suit Will-Ex. D-2 was forged and got up one. Sri Raghavendra Rao next submitted that neither the original plaintiff nor her L.Rs. the appellants herein have in fact not seriously challenged Ex. D-2-Will, despite the appellants herein have filed rejoinder dated 16-11-1990, wherein in para 1 thereof, they have averred that deceased Ramaswamaiah had not at all executed any Will as alleged by the respondent and that the alleged Will was forged, concocted and created by him subsequent to filing of the suit and that in none of the earlier suits filed by the respondent in the year 1970 or for that matter, earlier to the same, respondent had not adverted to the Will in question and that the Will was not at all acted upon by the parties as contended by the respondent. Therefore, Sri Raghavendra Rao argued that the suit Will-Ex. D-2 was executed by the original testator in the normal course of events while he was hale and healthy and in sound state of mind to execute Ex. D-2-Will. He further

argued that when Ex. D-2-Will was proved to be executed in a very natural way by the propounder-respondent before the learned Civil Judge, the point that the properties were bequeathed in a totally disproportionate way by the original testator is of no relevance. While taking me through the disputed Will-Ex. D-2, Sri Raghavendra Rao submitted that from a cursory look of the same it gives an impression that the same was executed more than 30 years ago when the propounder was very young being aged about 19 years and there is no artificial presentation or suspicious circumstances to doubt the execution thereof. While taking me through the evidence of D.W. 2-Neelam Lakshman Rao, one of the attestors, Sri Rao submitted that it is in the evidence of this witness that the suit Will-Ex. D-2 was written by the scribe by name Ramanuja Iyengar at the instance of and on narration by the original testator-Ramaswamaiah and that after the same was written, the testator Ramaswamaiah signed the same and thereafter, D.W. 2 and yet another attestor K. Annaiah (since dead) signed the same with the very same pen and that D.W. 4-Margal Rangappa had affixed his L.T.M. and in identification thereof, the scribe Ramanuja Iyengar had also written in Kannada therein that the L.T.M. was that of Margal Rangappa and further that in the end, the scribe had also endorsed therein that 'biklam' was by him and in witness thereof he had also affixed his signature in Kannada as Ramanuja Iyengar. Sri Raghavendra Rao further submitted that the evidence of D.W. 2-Neelam Lakshman Rao is also corroborated by the evidence of yet another attestor Margal Rangappa and that the writing by the scribe Ramanuja Iyengar is very well identified by D.W. 3-Sarojamma, his daughter. To appreciate that Ex. D-2-Will was written in a very natural way, Sri Rao further pointed out that the signature of the testator as at Ex. D-2-a, the signature of the attestor as at Ex. D-2-b and D. 2-c are all in one and the same ink when the L.T.M. of D.W. 4, the other attestor by name Margal Rangappa is in the pad ink and the entire written part of Ex. D-2-Will is in black ink and is in one and the same hand-writing of the 'biklamdar' Ramanuja Iyengar very well identified by his daughter Saroja-D.W. 3. 28. The further argument of Sri Raghavendra Rao is that the suit Will-Ex. D-2 is in consonance with Section 63 of the Indian Succession Act and that under Section 47 of the Registration Act, the Will since not required to be compulsorily registrable, there is nothing for the appellants to find fault with the same. He further submitted in this context that the respondent had proved Ex. D-2-Will as required under Section 68 of the Evidence Act. In view of that circumstance, he further argued that the suspicious circumstances pointed out by the learned Counsel for the appellants therefore cannot sustain. 29. In support of the argument of Sri Rao, he had cited before me the following decisions: (a) H. Venkatachala Iyengar v B.N. Thimmajamma and Others; (b) Smt. Deokali v Nand Kishore and Others; (c) Smt. Suraj Devi v Smt. Sita Devi; (d) Ammu Balachandran v Mrs. O.T. Joseph and Others; (e) Smt. Sudarskan Kaur v Ripudaman Singh and Others; (f) Shashi Kumar Banerjee and Others v Subodh Kumar Banerjee (since deceased) by L.Rs. and Others; (g) Rajlakshmi Dassi Bechulal Das v Krishna Chaitanya Das Mohanta. 30. Out of the above decisions cited, I feel that the following decisions are relevant for the purpose of this case. (a) In H. Venkatachala Iyengar's case,

on the point of proof of Will and onus of proof in paras 18 to 22 the Hon'ble Supreme Court held as hereunder: "(18) What is the true legal position in the matter of proof of Wills? It is well known that the proof of Wills presents a recurring topic for decision in Courts and there are a large number of judicial pronouncements on the subject. The party propounding a Will or otherwise making a claim under a Will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under Section 67 if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by Will and the three illustrations to this section indicate what is meant by the expression"a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a Will. This Section also requires that the Will shall be attested by two or more witnesses as prescribed. Thus, the question as to whether the Will set up by the propounder is proved to be the last Will of the testator has to be decided in the light of these provisions. Has the testator signed the Will? Did he understand the nature and effect of the dispositions in the Will? Did he put his signature to the Will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of Wills. It would prima facie be true to say that the Will has to be proved like any other document except as to the special requirements of attestation described by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of Wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters. (19) However, there is one important feature which distinguishes Wills from other documents. Unlike other documents, the Will speaks from the date of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed from the world cannot say whether it is his Will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of the departed testator. Even so, in dealing with the proof of Wills the Court will start on the

same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free Will. Ordinarily when the evidence adduce in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. (20) There may, however, be cases in which the execution of the Will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propoinder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the Will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the Will may otherwise indicate that the said dispositions may 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 is accepted as the last Will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the Will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free Will in executing the Will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter. (21) Apart from the suspicious circumstances to which we have just referred in some cases the Wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the Wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the Will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the Will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with Wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by Ecclesiastical Courts in England when they exercised jurisdiction with reference to Wills; but any objection to the use of the word 'conscience' in this context would in our opinion be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an in-

strument produced before the Court is the last Will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive. (22) It is obvious that for deciding material questions of fact which arise in application for probate or in actions on Wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It must however, be stated generally that a propounder of the Will has to prove the due and valid execution of the Will and that if there are any suspicious circumstances surrounding the execution of the Will the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Pareqin in Marines v Hinkson, "where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence for disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect". (b) In Ammu Balachandran's case, supra, the Division Bench of the Madras High Court held as follows:"(A) Succession Act (39 of 1925), Section 63 – Will –Suspicious circumstances – Will properly executed and proved before Court – same, however, not registered –Merely because of that no inference can be drawn against Will. Case law discussed. (B) Succession Act (39 of 1925), Section 63 – Will –Suspicious circumstances – Will properly executed and attested – Delay in applying for probate – Same properly explained – Delay cannot be treated as suspicious circumstance for denying probate. Case law discussed. (C) Succession Act (39 of 1925), Section 63 – Wilt –Suspicious circumstances – Unnatural bequest – He has not made any distinction between his children – Testator having only one house – He gave all sons only right of enjoyment along with others – During the lifetime of testator's widow, they were not to get anything from building – It is not surprising that testator has provided for widow and sons – They form testator's family. (D) Succession Act (39 of 1925), Section 63 – Will –Proof – Suspicious circumstances – Some pages of Will not signed – That cannot be said to be a suspicious circumstance – Will is only a declaration of last Will of the testator – One signature on the last page will be sufficient. (E) Succession Act (39 of 1925), Section 63 – Will –Execution – Undue influence of sons alleged – Testator living for more than seven years after execution of Will –He could change it – Further, sons not getting anything under Will - Undue influence as alleged is not proved". (c) By following the earlier decision referred to above in H. Venkachala Iyengar's case, supra, in yet another decision in Rani Purnima Debi and Another v Kumar Khagendra Narayan Deb and Another , on the point of mode of proof and onus, the Supreme Court indicated the principles in para 5 thereof as hereunder:"(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's case, supra. 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 testatamentary 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 propounded 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". (d) In Shashikumar Banerjee's case, supra, on the point of mode of proof and onus, the Supreme Court indicated the principles as hereunder: "(a) Succession Act (1925), Sections 63 and 289 – Will – Mode of proof – Onus – Principles indicated – When Court would grant probate – AIR 1958 Cal. 264, reversed. 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 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. (c) Evidence Act (1872), Section 3 – Appreciation of evidence – Evidence of attesting witnesses to a Will –Slight discrepancy as to time of execution. Where the evidence of both the attesting witnesses to the Will is that the Will was executed in the afternoon on the date on which it purported to have been executed, a slight discrepancy in the evidence of these witnesses as to the time when the Will was executed is not so serious as to destroy the value of their evidence especially when the witnesses were giving evidence after 8 or 9 years after the execution of the Will. (d) Evidence Act (1872), Section 3 – Appreciation of evidence – Chance witness. The mere fact that the attesting witnesses to a Will happen to be chance witnesses is no ground for disbelieving their evidence. It may be that it is more usual for witnesses to be called when a person is intending to execute a Will; even so there is nothing impossible in advantage being taken of the accidental presence of witnesses in this connection". (e) In Rajlakshmi Dassi Bechulal Das's case, supra, this decision is under Section 63 of Indian Succession Act and on the point of proof of execution. The Calcutta High Court held as hereunder: "(B) Succession Act (1925), Section 63 – Proof of execution. The evidence should be examined collectively and in doing so oral, documentary and surrounding circumstances should be taken into consideration. Before an evidence is rejected on grounds of discrepancies the Court must satisfy itself that those discrepancies cannot be explained on account of defective memory, failing power of observation". 31. While summing up the argument, Sri Raghavendra Rao submitted that there is no merit in the instance appeal and the same is filed by the appellants due to heart-burning, that the respondent got a larger share out of the properties left behind by the testator and therefore he prayed that the appeal be dismissed. 32. Having heard both sides, the points for my consideration are as hereunder: (1) Whether the suit Will-Ex. D-2 is executed by the testator-K. Ramaswamaiah and whether the same is genuine or not and whether the same is proved by the respondent? (2) Whether the suspicious circumstances are very well explained by the propounder of the Will, the respondent herein? (3) Whether the impugned judgment and decree passed by the learned Civil Judge is just and proper and that whether the same is called for to be interfered with by this Court in the instant appeal? 33. Now I proceed

to consider the above three points in the light of the arguments by the learned Counsel appearing for both sides. 34. Regarding Point No. 1: The original plaintiff-Rajalakshmi Devi the mother of the appellants 1 and 2 and the wife of appellant 3 had filed a suit in O.S. No. 5 of 1973 for partition and separate possession as against the respondent and appellant 3 herein of one half of her share. The appellant 3 was originally impleaded as defendant 2 for the reason that he was the Manager of the suit properties. They are: Four items of immovable properties shown in Schedule 'A' to suit and movable properties shown at Serial Nos. 1 to 3 and 3-A in Schedule 'B' to suit. The said suit O.S. No. 5 of 1973 was transferred to the Court of the Civil Judge and JMFC, Chintamani. The suit was re-registered as O.S. No. 5 of 1987. It is in the said suit the respondent herein had set up in his defence-Ex. D-2 Will executed by one K. Ramaswamaiah, the father of the original plaintiff and the respondent herein. It is the case of the plaintiff that the suit Schedules 'A' and 'B' properties originally belonged to K. Ramaswamaiah and that he died intestate in the year 1965 leaving behind him, his widow, one Narayanamma, the plaintiff and the respondent herein to succeed to his estate in l/3rd share each thereof. That the widow Narayanamma died in the year 1971 intestate and therefore the original plaintiff and the respondent herein had to succeed to suit Schedules 'A' and 'B' properties in equal share. The respondent, while the case was pending before the Court below had also amended his written statement to add paras 18(a) and 18(b) to the original written statement to say that the suit Will-Ex. D-2 was also acted upon as the original plaintiff and the respondent herein had jointly leased 7 shops among other shops on rentals to one S.R. Ashwathnarayan and that in H.R.C. No. 14 of 1985 before the Munsiff, Chintamani filed by the respondent as against the above said S.R. Ashwathanarayana for not paying rentals and for his eviction, the L.Rs of the deceased plaintiff (original plaintiff) had filed an impleading application. That thereafter, the appellants herein had also filed rejoinder to the above amended portion of the written statement contending that the Will was forged, concocted and created by the respondent subsequent to filing the suit and that in the earlier suit filed by the respondent, the Will was not disclosed and that in the lease deed executed by the original plaintiff and the respondent herein in favour of S.R. Ashwathanarayana, there was no mention of the Will and therefore, it was denied specifically that the Will was acted upon. It is to be pointed out at the outset that though Ex. D-2-Will is not a registered Will, the same is of no consequence in view of the fact that under Section 47 of the Registration Act, a Will is not an instrument compulsorily registerable, no matter that under Section 63 of the Indian Succession Act, every testator not being a soldier employed in an expedition nor engaged in actual warfare, or an airman so employed or engaged or a mariner at sea, shall execute his Will according to certain rules more fully set out therein. The Rules under Section 63 of the Indian Succession Act are as hereunder: "63. Execution of unprivileged Wills.–Every testator, not being a soldier employed in an expedition nor engaged in actual warfare, or an airman so employed or engaged, or a manner at sea, shall execute his Will according to the following rules: (a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other

person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary". 35. If we examine the suit Will-Ex. D-2 in the light of the above provisions of law, it cannot be said that the suit Will is not in consonance with Section 63, for the same was signed by the testator and the same was attested by three witnesses each of whom had seen the testator sign or affix his signature to Ex. D-2 - Will and that the attestors had put their signature to Ex. D-2 -Will as at Ex. D-2-b and D. 2-c in the presence of the original testator whose signature is found at Ex. D-2 as at Ex. D-2-a. Hence, in my considered view, it cannot be said that the suit Will, Ex. D-2 is opposed to law. 36. Now I advert to the point whether the respondent had proved the execution of D. 2-Will in consonance with Section 68 of the Evidence Act. The said section of the Evidence Act demands that one of the attesting witnesses at least be called for the purpose of proving its execution if there be an attesting witness alive. To quote Section 68 of the Evidence Act, the same reads as hereunder: "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 specifically denied". 37. In the instant case the respondent being the propounder of the Will, examined himself deposing that his late father K. Ramaswamaiah had executed the Will and the same was signed by him in the presence of three attestors by name Neelam Lakshman Rao-D.W. 2, Margal Rangappa-D.W. 3 and yet another attestor by name K. Annaiah and that the scribe was one Ramanuja lyengar who had also signed the same as a 'biklamdar'. He had examined at the first instance D.W. 2-Neelam Lakshman Rao. He had deposed that the suit Will-Ex. D-2 was written by the scribe Ramanuja lyengar of Kolar and the same was written on 20-12-1964 at the instance of the testator-K. Ramaswamaiah and that at the time of execution of the Will, Ramaswamaiah had disposable state of mind and he was hale and healthy and that the same was written as per the instructions of Ramaswamaiah and at that time, D.W. 3 and yet another witness by name K. Annaiah was also present and after the Will was written, the same was read over and it is thereafter, the testator-Ramaswamaiah signed Ex. D-2-Will in English and that

all of them were then present. He further deposed that after Ramaswamaiah executed Ex. D-2-Will at Ex. D-2-a, he had affixed his signature as at Ex. D-2-b and that the other attestor had affixed his signature as at Ex. D-2-c and that yet another attestor by name Margal Rangappa-D.W. 4 had affixed his signature as at Ex. D-2-D. In addition to D.W. 2, the respondent-D.W. 1 had also examined the other attestor-D.W. 4 who had also spoken of Ex. D-2 and its execution thereof by the testator-K. Ramaswamaiah and further with regard to the attestation by D.W. 2, K. Annaiah and by himself by affixing his L.T.M. He had also identified Ex. D-2-Will. Both D.W. 2 as well as D.W. 4 had spoken to the contents of the Will that the widow Narayanamma was directed to be given Rs. 50/- by the original plaintiff-Rajalakshmi Devi and the respondent, besides looking after her and further that out of the suit properties, only one half of 11 shops were bequeathed jointly by the testator in favour of the original plaintiff-Rajalakshmi Devi and the respondent. Having gone through the evidence of these two attestors – witnesses, it appears to me that their evidences appear to be cogent and acceptable and there is nothing for me to doubt that they were lying before Court to champion somebody's cause. Furthermore, both these witnesses are sufficiently aged. When D.W. 2-Neelam Lakshman Rao was aged about 60 years, D.W. 4-Rangappa was aged about 90 years at the time of their giving evidence before the learned Civil Judge. Nevertheless, I do find some discrepancies in the evidence of these two witnesses, but to me it appears that they are all minor in nature and do not go to the root of the matter and one should not forget here for a moment that the said witnesses were giving evidence before the Court 28 years later to the date of execution of Ex. D-2 - Will. 38. Sri Padubidri Raghavendra Rao had argued that the Will had been written in a very natural way and there is nothing to doubt. Taking a thread of that limb of the argument of Sri Raghavendra Rao, I closely scrutinised Ex. D-2-Will. No doubt it is written in an ordinary sheet of paper as argued by the learned Counsel for the appellants, but the way it is written it gives an impression that the same is written in a very natural way. The entire Will is handwritten in two pages of a foolscap paper. The first page is fully covered to the end without leaving space even to affix the signature thereunder and it is carried to almost 7/8th of page No. 2 also and immediately thereafter, the signature of the testator as at Ex. D-2-a is affixed in the right hand side corner. The signature is clearly made out as by K. Ramaswamaiah, the testator. In the left hand side corner, D.W. 2 had affixed his signature as Neelam Lakshman Rao and according to him, the same is affixed by him as at Ex. D-2-b in Telugu and that signanture is affixed by him on making over the pen by the testator-K. Ramaswamaiah. Beneath the signature of D.W. 2 as at Ex. D-2-b, the second attestor's signature as K. Annaiah as at Ex. D-2-c is shown to have been affixed. It appears to me that the signature as at Ex. J-D-2-a by the testator and the signature of D.W. 2-Neelam Lakshman Rao and yet another attestor-K. Annaiah as at Ex. D-2-b and Ex. D-2-c respectively appear to be in one and the same ink. It cannot therefore be ruled out that the same are also in the very same pen as deposed by D.W. 2, Ex. D-2-Will does bear the attestation by way of L.T.M. of D.W. 4. Of course, the said L.T.M. does not

appear to have been marked though D.W. 4 did speak that he had affixed his L.T.M. to Ex. D-2-Will. Nevertheless, I do find that his L.T.M. has been duly identified by the scribe, 'Biklamdar' - Ramanuja Iyengar. In view of the fact that the Biklamdar Ramanuja lyengar was no more, his daughter Saroja was examined by the respondent, D.W. 1 to identify the handwriting and signature of her father-Ramanuja lyengar. Therefore, it appears to me that the respondent-D.W. 1 had made every attempt to prove Ex. D-2-Will by examining D.W. 2 and D.W. 4 the attestors then alive and further to examine the daughter of the original scribe as D.W. 3 and in my considered view, the respondent had successfully proved the execution of Will Ex. D-2 by the testator. 39. In this context, it is relevant to refer to the defence set out by the appellants herein in filing the rejoinder to the amended portion of the written statement referred to above. In the said rejoinder, the appellants have contended that the respondent D.W. 1 had forged concocted and created the Will. In para 1 of the rejoinder, the appellants have stated as hereunder; "1. The deceased Ramaswamaiah had not at all executed any Will as alleged, by the defendant. The Will alleged by the defendant is forged, concocted and created by the defendant subsequent to the filing of this suit. The defendant had filed number of civil suits in the year 1970 and prior to filing of this suit. But in any of the suits, the defendant has not stated anything about the alleged Will". 40. From the above, it is clear that it is the specific case of the appellants that Ex, D-2 Will is forged, concocted and created one subsequent to filing the suit. But on appreciation of evidence it does not appear that the suit Will-Ex. D-2 was forged or concocted by the respondent, more particularly, when the appellants contended that such an act was subsequent to filing of the suit. As a matter of fact, the same is the conclusion of the learned Civil Judge in partially decreeing the suit in favour of the appellants. It is pertinent to mention here that the rejoinder was filed by the appellants after appellant 3 had inspected the suit Will by resorting to an I.A. for according to him permission for such a perusal and that it is after the same, in the rejoinder it had been contended that the suit Will-Ex. D-2 was forged and concocted. But, interestingly enough, the appellants did not say how and in what manner Ex. D-2-Will was forged and concocted. What is surprising is that, having contended that the Will was forged and concocted, they have not even disputed Ex. D-2-a signature of the testator in Ex. D-2-Will at any point of time either in their pleading or in challenging the evidence of D.W. 2 thereto. Even in the cross-examination of D.W. 2, D.W. 3 and D.W. 4 there was no serious challenge to their evidence so as to disbelieve the case of the respondent that the testator had executed Ex. D-2-Will in a normal way by affixing his signature as at Ex. D-2-a. Furthermore, the respondents have also not adduced any evidence in support of their specific case that Ex. D-2-Will was forged, concocted and created by the respondent. In view of the above circumstances, I am not left with any doubt that Ex. D-2-Will was executed by the testator-K. Ramaswamaiah in a normal way while he was in disposable state of mind and that the respondent being the only son and the original plaintiff was married to appellant 3 much earlier to the execution of Ex. D-2-Will and settled in life, it is quite natural that a large extent of the suit properties were bequeathed

to the respondent and a small portion of one half of the share in 11 shops suit Scheduled Item No. 3 as shown in Ex. D-2 - Will was bequeathed to the original plaintiff-Rajalakshmi Devi, the mother of the appellants 1 and 2 and wife of the appellant 3. Hence, I answer point No. 1 in the affirmative and in favour of the respondent. 41. Regarding Point Nos. 2 and 3: The learned Counsel for the appellants while arguing the appeal more importantly submitted that the suspicious circumstances that the Will had not seen the light till March, 1973, that the same was not set up in any of the earlier suit or suits filed by the respondent or for that matter for change of khata in respect of the properties in respect of which Ex. P-1 to P-27 was produced by the appellants, that the Class I heir as that of the widow of the testator by name Narayanamma was totally disinherited, that the Will was not acted upon, etc. were not well explained by the propounder-respondent. The said part of the argument appears to be appealing to some extent, but nevertheless, one should not forget the circumstances under which suit Ex. D-2-Will came into existence in the facts and circumstances of the case. In this context, it is worth referring to Ex. P-64 and Ex. P-65, the two inland letters stated to have been written by the respondent to P.W. 3 (appellant 3), when Ex. P-64 is dated 31-7-1971, Ex. P-65 is dated 6-8-1971. Both these two inland letters were stated to have been written by the respondent to the appellant 3 while the respondent was in Chintamani and the same were written to the respondent 3 with all reverence to the appellant 3. In the said letters, the respondent had enquired about the welfare of the appellant 3 and further reported with regard to progress of certain civil suits pending before the Civil Court in Chintamani and Kolar. On going through the said Exs. P-64 and P-65 as observed by the learned Civil Judge in para 27 of the impugned judgment, that contents of the said letters prove to the hilt the total innocence of the respondent and that he was not educated and not at all worldly wise. If this is the state of affairs as late as in the year 1971, one could understand to what extent the respondent was taken for granted, particularly by the appellant 3 when he was all in all in the matter of management of the subject properties which he managed as late as till the year 1972, consequent to the demise of the testator Ramaswamaiah in the month of November, 1965. It is relevant to mention here that all the family and business matters including the matters relating to the litigations of the subject properties were totally controlled by the appellant 3 as he had joined the testator young while he was 4 years old, when neither the original plaintiff-Rajalakshmi Devi and the respondent herein were born; furthermore, even during the lifetime of the testator, Ramaswamaiah, the appellant 3 was all in all being the confident-Manager of the family affairs of the parties. All the more, he was the nephew and a son in-law at the house of Ramaswamaiah. In the said circumstances, it cannot be ruled out that the respondent was totally under the thumb of the appellant 3 all through and in the said circumstances, it is quite natural that Ex. D-2-Will had not seen the light of the day till the dispute between the original plaintiff and the appellant 3 on the one side and the respondent on the other cropped up immediately after the death of Narayanamma, the widow of the testator in the year 1971. In the said circumstances, it appears to me that it is natural that Ex. D-2-Will

was not adverted to in any of the litigations resorted to by the respondent as against others. After all, the litigation was conducted by the appellant 3 himself on behalf of the respondent. I should point out here that the respondent was never a decision maker even till the year 1972 as admittedly, appellant 3 was the Manager of the family as well as the business of the family ever since the birth of the respondent. 42. Yet another situation that cannot be ruled out is that the respondent being weak, meak, ill-educated and not worldly wise, appeared to be not strong enough to raise the issue of execution of Ex. D-2-Will either before appellant 3 or before the original plaintiff-Rajalakshmi Devi. In that view of the matter, in my considered view, the suspicious circumstances putforth by the learned counsel for the appellants go to the background, when the suit Will-Ex. D-2 was successfully proved by the respondent before the learned Civil Judge. Yet another important factor that occurs to my mind is that the respondent could not create Ex. D-2-Will unless he was that vigilant, intelligent and bold, for the suit Will-Ex. D-2 was executed in the year 1964 when he was just a lad of 19 years. If in the year 1971 the respondent was innocent as could be made out in appreciation of Ex. P-64 and Ex. P-65, the two inland letters he had written to the appellant 3, referred to above, it is difficult for one to imagine that the respondent could collect the signature of the testator on a sheet of paper to create Ex. D-2-Will in his favour. It is totally difficult for one to conceive as to how the respondent could have managed to get a signature on a sheet of paper if it was true that he had concocted and created a Will as at Ex. D-2 to deprive the original plaintiff and for that matter, the widow of the original testator. In the said circumstances, I feel that the so called suspicious circumstances in the facts and circumstances of the case loose its credence when the respondent had proved Ex. D-2-Will before the learned Civil Judge. All the more, in my considered view the respondent had also made every attempt to remove the suspicious circumstances and that he had succeeded in doing so before the learned Civil Judge. In the totality of circumstances, it cannot be ruled out that the testator in anticipation of his death in the near future had executed Ex. D-2-Will very secretly, probably with the knowledge of the propounder, taking into account the circumstances, firstly that his only son, the respondent herein was quite young, ill-educated and not worldly wise to manage the affairs of the family business, secondly that the appellant 3 herein was managing the whole affairs of the family and the family business for a considerably long time and as such, himself and his wife, the original plaintiff-Rajalakshmi Devi were in dominant position in the given situation and thirdly that in the event of revealing the fact as to the execution of the Will-Ex. D-2 either to the original plaintiff or to the appellant 3 herein, it would jeopardise the interest of the respondent 1 and leave the family circumstances in a chaotic situation to the peril of the respondent; probably it is this bad situation the testator did not want his younger son to be confronted with after his demise. 43. It is relevant to mention here that as it emerged in the evidence on record, the testator-Ramaswamaiah who had commenced his business in a very humble way, later attained business acumen and he moved from his retail business in kerosene to dealership in petrol and having flourished very well in his petrol business, his name became popularly known as

'Petrolbunk Ramaswamaiah' in the trade town, Chintamani. It appears that, he had also developed high connection. Thus he acquired vast properties during his lifetime; however, for the reasons best known to him, he did not settle his property in a manner other than one he chose by way of execution of Ex. D-2, an unregistered Will secretly and that he did in the fag end of his life and about ten or eleven months earlier to his death in the month of November, 1965. The successful business man as he was, Ramaswamaiah during his lifetime did buy all that was possible for him to buy and preserve the same guardedly for the good to leave the pelf in suit Schedules 'A' and 'B' properties, in a big way to his progeny to succeed after his demise. But Alas! one thing he appeared to have not left behind is 'peace' for the daughter, the original plaintiff and the son, the respondent herein, for there arose bickerings and misunderstandings in the matter of sharing of the properties and there was a long drawn litigation for 25 years, passed on from one generation to another. It may appear to one that, had the original testator settled the properties in between his daughter and the son during his life-time in definite shares and further, more openly to the knowledge of both of them, things would not have come to the present sorry pass. It appears that there remained no business but only vast properties both movable and immovable soon after the demise of the testator. It is experience that in pragmatic life, money, property and other good things enjoyable in life will not bring peace and happiness in one's life unless there is an element of morals: kindness, concern, love and affection, accommodation, mutual understanding, sacrifice and the like, inculcated in one's thinking and conduct when the matter is concerning kith and kin and the dear and the near ones. All the more, blood is thicker than water. It is not out of context to recall the famous saying that 'man does not live to eat, but eats to live'. All this may sound philosophical, more particularly when the parties had totally fallen out due to lack of trust as against others, and were on warpath and thinking purely in materialistic way and in mundane equations. It is true that ethics and law are two things apart and they do not go hand in hand and that they operate in two different fields of human affairs. It is also true that it is wishful thinking to expect both to go together. But a blend of the two with an introduction of element of compromise in human activities and behaviour will definitely bring peace and harmony to individuals in particular and in the process to the society in general. After all, life is short, why not make it peaceful, pleasant and purposeful. I venture to add this philosophical note for the reason that, this judgment of mine is a public document, very much available for public consumption. 44. To depart from the philosophy and the ethics in life and to revert back to the case in hand, I should say that one should not forget that in the given situation, the testator Ramaswamaiah was the best Judge of his cause, to execute the suit Will-Ex. D-2 and in the said circumstances, one should see the same by application of 'Armed Chair Rule' as argued by the learned counsel for the appellants. This is actually what I tried to do in discussing the case in the aforementioned paras. In doing that exercise, I have also gone through the decisions cited by both sides referred to in paras 22 and 29 as above. 45. To come to the result part of the judgment in this appeal, I only state that, for the reasons aforementioned, I for

one do not find any merit in the instant appeal, for in my considered view, there is no error in the impugned judgment and decree passed by the learned Civil Judge. Hence, I do not have any hesitation to confirm the same. I hereby do so, accordingly. 46. In the result, the appeal fails and accordingly dismissed.