B. Venkatamuni vs C.J. Ayodhya Ram Singh & Ors on 19 October, 2006

Equivalent citations: AIR 2007 SUPREME COURT 311, 2006 (13) SCC 449, 2006 AIR SCW 6115, 2007 (1) AIR KAR R 572, 2006 (11) SCALE 148, 2007 (1) SRJ 128, (2006) 48 ALLINDCAS 28 (SC), (2007) 1 CIVILCOURTC 470, (2007) 2 MAD LW 870, (2007) 102 REVDEC 102, (2007) 2 ANDHLD 35, (2006) 8 SUPREME 771, (2007) 1 RECCIVR 277, (2007) 1 ICC 656, (2006) 65 ALL LR 902, (2007) 1 ALL WC 596, (2007) 1 CAL HN 29, (2007) 2 CIVLJ 204, (2006) 4 CURCC 352, (2006) 11 SCALE 148, MANU/SC/4692/2006, (2007) 1 WLC(SC)CVL 393

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Bench: S.B. Sinha, D.K. Jain

CASE NO.:
Appeal (civil) 4550 of 2006

PETITIONER:
B. Venkatamuni

RESPONDENT:
C.J. Ayodhya Ram Singh & Ors.

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & D.K. Jain

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No. 2201/2005) S.B. Sinha, J.

Leave granted.

One Smt. B. Akkayamma, although not a highly educated lady, was carrying on the profession of money lending. She acquired considerable property. The immovable properties held and possessed by her were situate in the District of Chittoor in the State of Andhra Pradesh and at Arkonam in the State of Tamil Nadu. She was unmarried. She had, however, been living with one Shri C.D. Jai Singh. Respondent Nos.1 to 3 are children of the said Jai Singh through his legally wedded wife Smt. Shyam Bai. She was original plaintiff No.4 in the suit. She, during the pendency of the suit, however, expired.

Jai Singh shifted to Arkonam from Tirupati. Akkayamma followed him. They started living together. She had, however, been visiting Chittoor and Tirupati occasionally. Plaintiffs-Respondents originally developed a disliking for Akkayamma. A suit was also filed against her, but it appears from the records that they had later reconciled and she was accepted as a member of the family. A purported Will was executed by Akkayamma on 23rd March, 1968 bequeathing her properties situate in the District of Chittoor in favour of respondent No.1 herein only. The said Will was an unregistered one. It may be, however, noticed that Jai Singh expired on 17th July, 1968. During his illness, although Akkayamma was possessed of sufficient properties both movable and immovable, but she did not spend any amount towards his treatment. Admittedly, she was of miserly nature. Surprisingly, however, she executed two deeds on 26. 9.1968 transferring her properties situate at Arkonam in favour of respondents. She expired on 29th September, 1968. Although in the Will Respondent No.1 alone was the beneficiary thereof, not only Respondent Nos. 2 and 3, but, as noticed herein before, their mother also filed an application for grant of probate in the Court of District Judge, Chittoor. Respondent No.4 herein, who is said to be the tenant in one of the premises in question, was impleaded as a party therein. Appellant herein was not initially impleaded as a party, although, he was the heir and legal representative of Akkayamma. He was impleaded at a later stage. The application for grant of probate was also amended by making an alternative prayer for grant of Letters of Administration. A caveat in the meantime had also been lodged by Appellant.

In view of the opposition to the prayer for grant of probate, the learned District Judge, by an order dated 2.7.1975 directed that O.P.No.102 of 1970 be converted into a regular suit in terms of Section 295 of the Indian Succession Act, 1925. In the said suit, Appellant in his written statement, inter alia, contended that the Will in question was a forged one. The learned trial court, in view of the pleadings of the parties, inter alia, framed the following issues :

> "1. Whether the will dt. 23.3.1968 alleged to have been executed by late Akkayyamma is true, valid and binding on the defendant?
>
> 2. Whether the defendant is a reversioner to the estate of late Akkayyamma?
>
> 3. Whether this court has no jurisdiction to entertain this suit?
>
> 4. Whether this suit is not maintainable for non compliance with any of the provisions of Indian Succession Act?
>
> 5. Whether the court fee paid is incorrect?
>
> 6. Whether the plaintiffs are entitled to a probate or letters of administration in respect of the suit property?
>
> 7. Whether the plaintiffs are entitled to declaration prayed for?
>
> 8. To what relief?"

In his judgment dated 28th October, 1981, the learned Judge opined that in view of presence of nine suspicious circumstances surrounding the execution of the Will, the same could not be held to have been executed by Akkayyamma. An appeal preferred thereagainst by Respondent Nos.1 to 3 was dismissed by a learned Single Judge of the High Court by a judgment and order dated 19th June, 1995. The learned Single Judge in his judgment, apart from nine circumstances enumerated by the learned trial Judge, also added three circumstances thereto in arriving at a finding that the execution of the said Will has not been proved.

A Division Bench of the High Court, however, while exercising its Letters Patent jurisdiction, by reason of the impugned judgment dated 26th October, 2004 reversed the said judgments holding that the evidence on record satisfies the requirements of Section 63 of the Indian Succession Act and that the trial court as also the learned Single Judge erred in discarding the Will on circumstances none of which was a suspicious one attending due execution of the Will. Appellant is, thus, before us.

Mr. T.N. Rao, learned counsel appearing on behalf of the appellant submitted that the Division Bench of the High Court committed a serious error in ignoring a large number of suspicious circumstances surrounding purported execution of the Will as opined by the learned District Judge as also the High Court. It was urged that the Division Bench committed an error in so far as wrong legal tests were applied in opining that once the Will stands proved, the suspicious circumstances enumerated by the trial court and the Single Judge, take a back seat. It was submitted that in view of the findings of fact arrived at by the learned District Judge and the learned Single Judge, the Division Bench was obliged to consider each of the enumerated circumstances and in not doing so, it has committed a manifest error.

Mr. V. Balachandran, learned counsel appearing on behalf of respondents, on the other hand, urged that once execution of the Will has been found to be proved in terms of the provisions of Section 63 of the Indian Succession Act, even if there existed some discrepancies, the same should be ignored as the witnesses had deposed after a long time.

Akkayamma was not a highly educated lady. She received only primary education. She could only put her signature. She was otherwise worldly. She was of miserly nature. She was originally a resident of Arconam. She knew the importance of registration of document as only a couple of days before her death, i.e., 29th September, 1968 she executed two deeds of settlement in favour of Respondents. We need not go into the question as to whether Plaintiffs-Respondents have sufficiently proved love and affection of Akkayamma for them, but, when a question comes up for consideration before a court in regard to grant of probate or Letters of Administration with a copy of the Will annexed thereto, it is trite that all circumstances should be taken into consideration. It may be true, as has been opined by the Division Bench of the High Court, that proof of execution of the Will in terms of Section 63 of the Indian Succession Act and Sections 67 and 68 of the Indian Evidence Act would be a pre-requisite, but, to take the same in evidence it is also trite that while arriving at a finding as to whether the Will has duly been executed or not, the court must satisfy its conscience having regard to the totality of the circumstances. The Will in question was executed on 23.3.1968. It was an unregistered one. She was ordinarily not a resident of District of Chittoor. She

used to visit the said place occasionally. She did not know intimately the scribe of the Will, namely, P.W.1-Shri V. Thyagarajan. He was a teacher. There was no reason for Akkayamma to walk to his residence and ask him to scribe the Will. If P.W.1 was not a professional scribe, there may not be any particular reason as to why Akkayamma had chosen him for the said job. In the event of suspicion in regard to the genuineness or otherwise, the Will must be proved to have been executed in accordance with law establishing that the same has been done in presence of at least two witnesses. Although, the court should not approach the question with a suspicion that the Will is not a genuine one, the general guidelines laid down by this Court and the High Court in this behalf should be followed. The issue necessarily involves due appreciation of evidence. We may notice that in the Will Akkayamma described herself as the father's wife of Shri C.D. Jaya Singh. What is meant by that is not known. While describing herself as the father's wife of C.D. Jaya Singh, it was stipulated that she had been having that status for the last 40 years. Our attention has been drawn to the findings of the learned District Judge by the learned counsel for Respondents that Akkayamma developed love and affection not only for Jai Singh, but also for his children through his first wife and particularly, the 3rd plaintiff who was his daughter. If that be the position, then why she had not bequeathed any property in her favour is difficult to understand. The learned District Judge enumerated nine circumstances which, according to him, were relevant for considering the proof of due execution and attestation of the Will in question, which are as under :

1. Akkayamma lived with Jai Singh, the father of the plaintiffs 1 to 3 and husband of plaintiff No.4 at Arkonam in Tamilnadu while the plaintiffs lived at Chittoor in Andhra Pradesh till Jai Singh and she died.

2. There are indications to show that the plaintiffs were against Akkayamma to some extent when the second plaintiff filed a suit for partition on the ground that Jai Singh squandered the property after he developed contact with Akkayamma.

3. There was no special reason for love and affection between them except that Akkayamma had no children. There was no reason for Akkayamma in particular to choose first plaintiff to bequeath the schedule properties ignoring all other similarly placed persons like plaintiffs 2 and 3.

4. Piecemeal disposal of her properties at different stages and different types of documents Exs. A.1, B.24 and B.25, namely, settlement deed looks unnatural.

5. Akkayamma leaving registered documents Exs.

B.24 and B.25 just three day prior to her death as against unregistered will six months prior to her death looks suspicious.

6. The will and settlement deeds almost read similar with same intentions consequently leading to a serious doubt.

7. The signature of Akkayamma on Ex.A.1 as Akkayamma Chevralu for the first time as against her usual signature on many documents including the settlement deeds Ex. B.24 and B.25 coming out just three days prior to her death with signature as Akkayamma speaks of something unnatural in the conduct of her.

8. The omission to mention the execution of Ex.A.1 will or the execution of such property in Exs. B.24 and B.25 is a strong circumstance leaving a serious suspicion on the conduct of Akkayamma.

9. The contents of Ex.A.1, which are conditional and contingent, appear to be unnatural."

The learned Single Judge in his judgment agreed therewith. Both the learned District Judge as also the High Court pointed out a number of infirmities in the testimonies of the 1st plaintiff as also P.Ws. 1- the scribe and P.Ws. 2 and 3 - the attesting witnesses. To disbelieve their evidences in regard to the execution of the Will (Exhibit A.1), the learned courts pointed out that if Akkayamma wanted to execute a Will, she would have done so in her own house or in the house of plaintiffs. P.Ws. 1 to 3, on their own showing, were strangers to her. They had not even seen Jai Singh. They had no occasion to meet Akkayamma at any point of time and they had expressed their ignorance about her. They even did not know whether Jai Singh was alive at the time of their deposition. According to them, on the date of execution of the Will Jai Singh had not expired, which was not a fact. All this, and rightly so, could not be ignored by the trial judge as also by the High Court. The scribe, P.W.1, even did not explain as to how he was prevailed upon to draft an important document like Will and what was his experience therefor. It had further been noticed that P.W.2 worked in the same Bank wherein the 1st plaintiff was employed. Plaintiff No.2 was the son of P.W.1 and P.W.3 was also a relative of the plaintiffs. They were, thus, termed as interested witnesses by the learned District Judge. The learned Singe Judge on further re-appreciation of evidence added three more circumstances stating as the suspicious ones, which are as under :

> 1. Akkayamma came all the way from Arkonam to Chittoor and went to the house of a stranger P.W.2 while thinking of leaving a will only in favour of first plaintiff without any background or reason and the said conduct lends no explanation on the part of the plaintiffs.
>
> 2. It appears that Akkayamma who is said to be a miserly lady when she did not spare any property while her paramour husband like Jai singh was on death-bed, thought of leaving a will in favour of plaintiff No.1 for no reason.
>
> 3. Akkayamma appears to have included some of the properties found in Ex.A 1 in Exs. B.24 and B.25 also as detailed by the learned District Judge."

In an intra-court appeal, the Division Bench undoubtedly may be entitled to re-apprise both questions of fact and law, but the following dicta of this Court in Umabai & Anr. vs. Nilkanth Dhondiba Chavan (Dead) By Lrs. & Anr. [(2005) 6 SCC 243], could not have been ignored by it, whereupon the learned counsel for Respondents relied:

> "It may be, as has been held in Asha Devi v. Dukhi Sao (1974) 2 SCC 492 that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint."

In the said decision, it was further noticed:

> "Yet in Manjunath Anandappa vs. Tammanasa (2003) 10 SCC 390 it was held : (SCC p. 403, para 36) "36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below."

The Division Bench of the High Court did not address itself to the circumstances noticed by the learned Single Judge, but proceeded on the premise that once execution is duly proved, the court may not probe deeper into the matter stating :

> "If the various requirements of a valid will are established, then as observed by the Privy Council in Motibai Hormusjee's case, "A man may act foolishly and ever heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition."

Section 63 of the Indian Succession Act provides :

> "63. Execution of unprivileged wills. * * *
>
> a) the testator shall sign or shall affix his mark to 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."

Proof of a Will shall strictly be in terms of the abovementioned provisions.

It is, however, well settled that compliance of statutory requirements itself is not sufficient as would appear from the discussions hereinafter made.

The approach of the Division Bench of the High Court did not address itself the right question. It took an erroneous approach to the issue as would appear from the decision of this Court in Surendra Pal & Ors. vs. Dr. (Mrs.) Saraswati Arora & Anr. [(1974) 2 SCC 600], whereupon again Mr. V. Balachandran himself placed reliance, wherein the law was stated in the following terms :

> "The propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and qualify of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in relevant circumstances of the case, entertain."

In H. Venkatachala Iyengar vs. B.N. Thimmajamma & Ors. [(1959) Supp.1 SCR 426, it was opined :

> "However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed 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 adduced 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.

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 propounder'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."

In Smt. Guro vs. Atma Singh & Ors. [(1992) 2 SCR 30], this Court has opined :

"With regard to proof of a will, the law is well- settled that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement 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 signature of the testator as required by law is 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. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leader part in the making of the will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator."

Yet again Section 68 of the Indian Evidence Act postulates the mode and manner in which proof of execution of document required by law to be attested stating that the execution must be proved by at least one attesting witness, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence.

This Court in Daulat Ram & Ors. vs. Sodha & Ors. [(2005) 1 SCC 40], stated the law thus :

> "Will being a document has to be proved by primary evidence except where the court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses 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. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so."

[Emphasis supplied] Yet again in Meenakshiammal (Dead) Through & Ors. vs. Chandrasekaran & Anr. [(2005) 1 SCC 280], it was stated :

> "In the case of Chinmoyee Saha v. Debendra Lal Saha it has been held that if the propounder takes a prominent part in the execution of the will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same."

{See also Sridevi & Ors. vs. Jayaraja Shetty & Ors. [(2005) 8 SCC 784].} The principle was reiterated in Pentakota Satyanarayana & Ors. vs. Pentakota Seetharatnam & Ors. [(2005) 8 SCC 67], wherein it was stated :

> "In the instant case, the propounders were 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. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated above."

However, having regard to the fact that the Will was registered one and the propounder had discharged the onus, it was held that in such circumstances, the onus shifts to the contestant opposing the Will to bring material on record meeting such prima facie case in which event the onus shifts back on the propounder to satisfy the court affirmatively that the testator did not know well the contents of the Will and in sound disposing capacity executed the same.

Each case, however, must be determined in the fact situation obtaining therein.

The Division Bench of the High Court was, with respect, thus, entirely wrong in proceeding on the premise that compliance of legal formalities as regards proof of the Will would sub-serve the purpose and the suspicious circumstances surrounding the execution thereof is not of much significance.

The suspicious circumstances pointed out by the learned District Judge and the learned Single Judge of the High Court, were glaring on the face of the records. They could not have been ignored by the Division Bench and in any event, the Division Bench should have been slow in interfering with the findings of fact arrived at by the said court. It applied a wrong legal test and thus, came to an erroneous decision.

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed with costs. Counsel fee assessed at Rs.10,000/-.