Meenakshiammal (Dead) Through Lrs & ... vs Chandrasekaran & Another on 3 November, 2004

Equivalent citations: AIR 2005 SUPREME COURT 52, 2005 (1) SCC 280, 2004 AIR SCW 6254, (2005) 1 ALLMR 5 (SC), (2004) 9 JT 371 (SC), 2004 (9) JT 371, (2004) 24 ALLINDCAS 15 (SC), 2005 (1) SRJ 25, 2004 (24) ALLINDCAS 15, 2005 (1) ALL MR 5, 2004 (3) BLJR 2289, 2004 BLJR 3 2289, 2004 (6) SLT 716, 2004 (9) SCALE 256, 2005 (1) ALL CJ 679, (2004) 5 ALL WC 3793, (2004) 8 SUPREME 418, (2005) 1 GUJ LH 106, (2005) 2 MAD LW 731, (2005) 2 PAT LJR 133, (2005) 98 REVDEC 608, (2005) 1 SCJ 267, (2005) 2 RECCIVR 734, (2005) 1 CURCC 17, (2005) 1 CIVILCOURTC 197, (2005) 1 HINDULR 158, (2005) 1 LANDLR 4, (2005) 1 ICC 559, (2004) 9 SCALE 256, (2005) 1 WLC(SC)CVL 183, (2005) 58 ALL LR 677, (2005) 1 BLJ 485, (2005) 1 CIVLJ 911

Bench: Ashok Bhan, S.H. Kapadia

```
           CASE NO.:
Appeal (civil)  1387 of 1999

PETITIONER:
Meenakshiammal (Dead) through LRs & Others

RESPONDENT:
Chandrasekaran & Another

DATE OF JUDGMENT: 03/11/2004

BENCH:
ASHOK BHAN & S.H. KAPADIA

JUDGMENT:
```

J U D G M E N T KAPADIA, J.

This civil appeal, by grant of special leave, is directed against a judgment and order dated 20.11.1997 of a Single Judge of the Madras High Court allowing Second Appeal No.1996 of 1982.

For the sake of convenience, the parties herein are referred to as they are arrayed in the trial Court.

The brief facts giving rise to this appeal are as follows: One Velu Pillai had two wives. The said Velu Pillai by his first wife had a daughter by name Kamakshi and a son by name Sivaperumal (hereinafter referred to as "Siva"). The said Velu Pillai by his second wife had a son by name Sadasivam and two daughters, Kaveri (spinster) and Gnanambal. That, Kamakshi, the real sister of Siva, had three children, namely, Meenakshi Ammal (plaintiff no.1), Arunachalam Pillai (plaintiff

no.2) and Palani Velu Pillai (plaintiff no.3). Appellants herein are the legal representatives of the said plaintiffs.

Defendant no.1, Chandrasekaran (respondent no.1) is the son of Sadasivam whereas defendant no.2, Vadivelu (respondent no.2) is the son of Gnanambal. They are the children of the step brother and the step sister of Siva.

Siva died as bachelor on 6.11.1978. Siva and his step brother Sadasivam had jointly executed a deed of settlement on 10.6.1956. Under the said settlement, the two brothers settled some of their properties in favour of Kaveri and divided the rest of their properties amongst themselves.

In the present matter, we are concerned with the separate properties of Siva (since deceased).

Meenakshi, Arunachalam Pillai and Palani Velu Pillai, children of Kamakshi, instituted title suit bearing O.S. No.247 of 1981 in the Court of District Munsif of Thiruthuraipundi (hereinafter for the sake of brevity referred to as "the trial Court) for a declaration and for recovery of possession of the suit properties of Siva alleging that they were the children of his real sister and, consequently, were entitled to succeed to his properties; that defendant nos.1 and 2 were the children of the step brother and the step sister of the deceased and in the circumstances they, the plaintiffs, were entitled to succeed to the properties of Siva, in preference to the defendants. According to the plaintiffs, neither Sadasivam nor Gnanambal, much less than their children, were entitled to succeed to the properties of late Siva.

In the written statement, the aforestated defendants denied that Siva died intestate. That, Siva died on 6.11.1978 leaving behind the will dated 19.10.1978 (Ex.B/8). In the written statement, it was submitted that at the time of his death, Siva was in sound disposing state of mind. It was further alleged that Siva had devised all his properties under the said will to be taken in equal share by the said two defendants. That, the said defendants were put in possession and that they were cultivating the said lands since then. It was alleged that the said Kamakshi and Siva were not on cordial terms; that she never looked after her brother, Siva, who resided all along with his step sister Kaveri. That, Palani Velu, plaintiff no.3 herein, had sued Siva, during his life time. In the circumstances, it was urged that Siva disinherited the plaintiffs vide the aforestated will (Ex.B/8), which was duly executed and attested in accordance with the provisions of section 63 of the Succession Act, 1925.

On the above pleadings, five issues were framed by the trial Court. We are mainly concerned with first two issues, namely, (1) Whether the will Ex.B/8 was true and valid?; and (2) whether the will Ex.B/8 was acted upon?

In proof of the aforestated will, Ex.B/8, the defendants examined five witnesses including the 2nd defendant (DW1) who deposed that the deceased, Siva, had asked the defendants to fetch a scribe and the attesting witnesses as he wanted to execute the will in their favour. Accordingly, they went and fetched the attesting witnesses and the scribe. DW1 further deposed that Siva was 85 to 90 years old when he died on 6.11.1978 and that he died after 15 days from the date of execution of the said will. DW1 further deposed that Siva was unable to walk freely as he had a fracture in his thigh and

that he was bed-ridden for a period of six months before his death. However, DW1 further stated that Siva was hale and hearty in other respects and he was in sound disposing state of mind. DW1 further deposed that he was attending on the deceased during his treatment. DW1 further deposed that the plaintiffs resided in the village, Vettaikaran, about 15 miles away from the suit village where Siva was living. DW1 further deposed that Siva was looked after by Kaveri and Sadasivam and, therefore, the will, Ex.B/8, was duly executed by Siva in favour of the defendants. DW1 denied that the deceased Siva had become senile and that he was incapable of judging things for himself. DW1 denied that Ex.B/8 was executed at the instance of the defendants and without the knowledge of the deceased testator who allegedly had lost all his mental faculties. DW2, Vaithinathan, the scribe deposed that as requested by Siva, he was taken by DW1 to Siva's residence, where in the presence of Siva and under his instructions, the will was written and that too in the presence of the attesting witnesses. That in the presence of DW2, Siva, had read the contents of the will before subscribing his signature thereon. Further, in the present case, the defendants also examined the attesting witnesses, who have deposed in proof of the execution of the said will. They have deposed that the deceased Siva was in a sound disposing state of mind and he had executed the will on his own.

In the light of the above evidence, vide judgment and decree dated 30.9.1981, passed by the trial Court, it was held, that, the said will, Ex.B/8, was really and voluntarily executed by Siva in favour of the defendants. The trial Court also found that the defendants had taken possession of the properties bequeathed to them under Ex.B/8 in pursuance of the said will. That the defendants were in possession and enjoyment of the suit lands in their own right in pursuance of the said will. That the will was proved and acted upon by the defendants and consequently, the plaintiffs were not entitled to the relief of declaration and for recovery of possession. In view of the said findings, the suit was dismissed.

Being aggrieved, the plaintiffs preferred an appeal bearing A.S. No.48 of 1982 in the Sub-Court, Nagapattinam (hereinafter for the sake of brevity referred to as "the lower appellate Court) which came to the conclusion, that, the defendants were instrumental in execution of the will (Ex.B/8) inasmuch as DW1 had brought the attesting witnesses to the house of Siva. That, although the will was dated 19.10.1978 and though Siva was hale and hearty as alleged, no steps were taken to get the will registered till 6.11.1978 when the testator died. That, no cogent reason had been given for non-registration of the will during the said period. That, no reason had been given as to why Siva had excluded the children of his own sister, Kamakshi. That, the will is written by DW2 in black ink whereas the signature of the testator is in a different ink and consequently Ex.B/8 was forged. That, although Siva was undergoing treatment in the hospital, Ex.B/8 was executed at his residence. That, there were contradictions in the evidence of the witnesses. In the circumstances, it was held, that the will dated 19.10.1978 executed by Siva was not proved. In the result, the appeal was allowed and the judgment and decree of the trial Court was set aside.

Aggrieved, the respondents herein preferred Second Appeal No.1996/82 in the High Court. In the said appeal, the High Court formulated the following substantial question of law:

> "Whether the Lower Appellate Court is right in law in holding that suit "Will" was procured and forged one in spite of the fact that there was no pleading and no

evidence to that effect?"

Answering the above question, it was held by the High Court that in the plaint, there was no challenge to the validity or genuineness of the will despite the fact that full particulars of the will were supplied to the plaintiffs by the reply dated 26.1.1979. That, the will was produced in the suit by the defendants who had proved the same. It has been further held that the plaintiffs had not alleged forgery or undue influence in the plaint and in the absence of such pleas, it was not open to the lower appellate Court to hold that the will was procured or forged. The High Court examined the evidence and came to the conclusion that the execution of the will by Siva was proved; that Siva was at the time of execution of the will having sound disposing mind and in the circumstances, the findings recorded by the lower appellate Court were perverse and not proper. In the result, the appeal was allowed and the judgment and decree of the trial Court, dismissing the suit, was restored. Hence, this civil appeal.

Mr. K.B. Sounder Rajan, learned advocate appearing on behalf of the appellants submitted that the plaintiffs had instituted the suit for declaration and for recovery of possession in which the defendants set up Ex.B/8. He submitted that although in the plaint, forgery was not alleged, the lower appellate Court was right in returning the finding of forgery as the defendants who relied on the will had failed to remove the suspicious circumstances surrounding the will, including use of different ink between the signature of Siva in Ex.B/8 and the contents thereof. In this connection, learned advocate for the appellants submitted that the attesting witnesses were brought to the house of Siva by the defendants. That, the defendants, who were the sole beneficiaries, were instrumental in procuring the will. That, there was no reason for Siva to exclude the plaintiffs. That, no reason has been given for not getting the will registered till 23.4.1980. That, Siva had become senile and was ailing at the time of the will. That, the will was got made under undue influence. In the circumstances, it was urged, that, the will is not proved to be genuine. It was urged that the High Court had erred in interfering with the well reasoned judgment of the lower appellate Court.

We do not find any merit in this civil appeal. 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 proof of 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 it accepts the will as genuine. Even where the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be regarding the genuineness of the signature of the testator, the condition of the testator's mind, the disposition 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 normally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator.

In the present case, the evidence on record indicates that Siva was a bachelor. His relationship with his real sister Kamakshi was not cordial. The deceased used to live with his step sister Kaveri. At the time of the execution of the will, Siva was 85 years old and had suffered fracture. He was mentally

alert. He was looked after by the defendants. The plaintiffs were nowhere in sight during his hospitalization or his treatment. In the circumstances, the defendants have proved the reason for exclusion of the plaintiffs from the benefits under the will.

In the matter of execution of the will, the evidence of DW2 shows that DW1 had come to fetch him at the behest of Siva. DW2 wrote the will under the instructions of Siva. Before signing, Siva had read the will. The will was signed in the presence of the attesting witnesses. The said witnesses had attested in presence of Siva. There is no evidence on record to indicate that Siva had become senile. In this connection, it may be pointed out that in October, 1978, Siva had alienated one of his several properties for consideration which circumstance shows that he had a sound disposing mind and that there was no substance in the allegation of the plaintiffs that the testator had become senile. As rightly pointed out by the trial Court, it was the plaintiff's own case, while cross-examining DW1, that Siva was a prudent and wise man. Further, we are in agreement with the view expressed by the trial Court that even in the cross- examination, there was no suggestion put to DW1 that the signature on Ex.B/8 was not that of Siva. That, in the cross-examination, no motive was suggested against DW2 to DW5 for supporting the case of the defendants. Further, the evidence indicates that Siva was hale and hearty and he was advised to get the will registered, which he refused, saying that he was in good health and expected to live long.

In the case of Sm. Chinmoyee Saha v. Debendra Lal Saha & others reported in [AIR 1985 Calcutta 349], 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.

In the case of Ryali Kameswara Rao v. Bendapudi Suryaprakasarao & others reported in [AIR 1962 AP 178] this Court while discussing the provisions of section 63 of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances disclosed and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough.

In the case of Madhukar D. Shende v. Tarabai Aba Shedage reported in [AIR 2002 SC 637], it has been held as follows: "8. The requirement of proof of a Will is the same as any other document excepting that the evidence tendered in proof of a Will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the Court either believes that the Will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the Will was duly executed by the testator, then the factum of execution of Will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the Jury in R v. Hodge, 1838, 2 Lewis CC 227 may be apposite to some extent "The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected hole; and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." The conscience of the Court has to be satisfied by the propounder of Will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a Will provided that there is something unnatural or suspicious about the Will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict positive or negative.

9. It is well-settled that one who propounds a Will must establish the competence of the testator to make the Will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. The contestant opposing the Will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the Court affirmatively that the testator did know well the contents of the Will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."

In the present case, the propounders of the will have proved that the will was signed by Siva; that at the time of execution of the will, he had a sound disposing state of mind; and that he had reasons to exclude the plaintiffs who did not care for him in his old age. Lastly, as stated above, the onus to prove forgery, undue influence or collusion was on the plaintiffs who have alleged that Ex.B/8 was forged. In the absence of such a plea, the lower appellate Court had erred in holding that the will was

forged. We are satisfied on examination of the evidence that execution, attestation and genuineness of the will has been proved as held by the impugned judgment and in the circumstances, we find no merit in this appeal.

In the result, the appeal fails and is dismissed, with no order as to costs.