Supreme Court of India
Pushpavathi And Ors. vs Chandraraja Kadamba And Ors. on 23 August, 1972
Equivalent citations: AIR 1972 SC 2492, (1973) 3 SCC 291
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Bench: A Grover, D Palekar
JUDGMENT D.G. Palekar, J.

1. This appeal is from the judgment and decree of the Mysore High Court in Regular First Appeal No. 73 of 1962 by which the decree passed by the Sub-Judge, South Kanara in Original Suit No. 53 of 1961 was reversed. The suit was for possession of immovable properties and mesne profits. The properties in suit which are situated in 3 villages of Karkala Taluk, namely, Irvathoor, Miyar and Nallur, belonged to one Shantiraja Kadamba. He died on 21-10-1958. The family was an Aliyasanthana family. But after the passing of the Hindu Succession Act, 1956, the children of his pre-deceased brothers became entitled to the inheritance as Shantiraja Kadamba did not leave behind either ft widow or a legitimate child. The plaintiffs are the children of the two deceased brothers Jinnappa Kadamba and Devaraja Kadamba. Their claim to the extensive property of Shantiraja was challenged by the five defendants. They claimed all the property in suit under a Will alleged to have been executed by Shantiraja on 10-3-1958 i.e. more than six months before his death. The plaintiffs alleged that the deceased Shantiraja had made no Will and had died intestate. They also alleged that the alleged Will which was put forward by the defendants was a forgery having been brought into existence after Shantiraja's death by the defendants with the help of the scribe and the attesting witnesses. So the only substantial question before the Court was whether the alleged Will dated 10- 3-1958 was a valid Will executed by Shantiraja.

2. It appears that the suit had been originally filed in the Court of the District Munsif, Karkal and the relief sought therein was only for a declaration that the alleged Will was not genuine. Practically all the evidence was recorded before the District Munsif and then it became apparent that the suit for mere declaration might fail if consequential relief by way oil possession was not prayed for. So the suit was amended for possession and filed in the court of. the Sub-Judge, South Kanara. By agreement between the parties the whole of the evidence which was recorded before the District Munsif was taken on record in the Sub-Judge's Court and the learned, Sub-Judge proceeded to deliver judgment after hearing arguments. The point is that the learned Sub-Judge did not have, like the High Court, the benefit of watching the demeanour of the witnesses examined in the case.

3. The learned Sub-Judge found that there were several suspicious circumstances surrounding the execution of the Will and these suspicions had not been removed by satisfactory evidence. He was of the view that the Will must have come into existence after the death of Shantiraja and the forged Will must have been brought into existence by defendant No. 1 with the help of the other defendants, the scribe and the attesting witnesses. In appeal the High Court came to a contrary conclusion. It held that there was nothing unnatural in the testator giving his estate to the defendants who were closer to him than the plaintiffs. The High Court further held that the scribe and the attesting witnesses were independent and sufficiently disinterested witnesses and there was no reason why their evidence should be discarded. Of the two hand-writing experts examined one on either side, the learned Judges, who put the signature of Shantiraja to a close scrutiny, were more

inclined to accept the evidence of the expert examined on behalf of the defendants that the signature on the Will was that of Shantiraj. Accordingly the High Court held that the Will was the valid Will of Shantiraja Kadamba and the defendants were entitled to the suit properties. thereunder. In that view the High Court allowed the appeal of defendants end dismissed the plaintiffs' suit. It is from that order that the present appeal is filed in this Court.

4. The Will in question is Exhibit B. 1 dated 10-3-1958. The case of the defendant is that it was executed by Shantiraja at about 1.00 P.M. on that day. The Will was written by one P. Venkataramana (D.W. 1) a teacher in the village School at Irvathoor. The two attesting witnesses are Dharampal Kadamba, (D.W. 2) and Anantraj Kadamba (D.W. 3), Dharampal Kadamba is the Pate! of Miyar village since 1951 and is also the President of the local village Panchayat. Anantraj Kadamba (D.W. 3), is a resident of Irvathoor and is the uncle of Dharampal Kadamba. The evidence of all these three witnesses is to the effect that the scribe wrote the will to the dictation of the deceased Shantiraja and that after the same was written the deceased Shantiraja signed the same in the presence of the scribe and the two attesting witnesses. After the signature of the testator, the two attesting witnesses put their signatures as attesting witnesses and so did the scribe. If the evidence of these witnesses is accepted as satisfactory as High Court has done, there can be no doubt that the Will will have to be regarded as a valid Will of the deceased Shantiraja. It is the plaintiff's own case that except for two days before his death in October, 1958 the deceased Shantiraja, though old, enjoyed good health and used to move about in the village. His state of health and capacity to execute the Will on 10-3-1958 is beyond dispute.

5. The position in law is no longer in doubt. It is for the propounder of the Will to prove it, 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 which is placed upon the propounder of the Will. Where there are suspicious circumstances, the propounder of the Will has to explain them away to the satisfaction 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. If the propounder succeeds in removing the suspicious circumstances the Court would have to give effect to the Will even if the Will might be unnatural in the sense it has cut off wholly or in. part near relations. See : Shashi Kumar v. Subodh Kumar .

6. Where the signature of the testator is challenged as a forged signature and the Will does not come from the custody of a public authority or a family Solicitor the fact that the dispositions made in the Will were "unnatural, improbable or unfair, would undoubtedly create some doubt about the Will, especially, when the document is unregistered and comes from the custody of a person who is the major beneficiary under the Will. In the present case the large estate of the deceased has been distributed by him. principally between defendant No. 1 Chandraraj Kadamba, Janki, defendant No. 4 and Jayavathi, defendant No. 5. A small portion is given to defendant No. 3 Ratnavathi and her husband Jinaraja, defendant No. 2. We will, therefore, have, to see the relations of these five defendants with the deceased Shantiraja. The plaintiffs themselves have alleged in the plaint that defendant No. 1 was the nephew of the deceased. He belonged to the same original Aliyasanthana

family as the deceased, though it appears there was a partition between the two branches. Moreover, it has come in evidence that defendant No. 1 was living with the deceased in his Koike house at Irvathoor from 1935 to 1947 and it was only after his marriage that he left for the house of Ms wife at Konajee. A fact to be remembered about Aliyasanthana families is that husbands go to live with their wives as females principally inherit the estate. This is how defendant No. 1 had gone to live with his wife. Defendant No. 1 has stated that he personally did not know about the execution of the Will till the Will itself was given to him by the deceased in May, 1958 for safe custody. It is not shown that the plaintiffs were closer to and more intimate with the deceased than defendant No. 1 who for many years was actually living with Shantiraja, belonged to the Aliyasanthana family and was a nephew of the deceased.

7. Shantiraja does not appeal to have lived the life of an ordinary householder. He did not marry and did not have any legitimate child. So far as could be seen, he had one house at Miyar. His deceased brother's children lived in Miyar only. Shantiraja. however, seems to have left Miyar and gone to Irvathoor-another village and lived there in a house known as the Koike house. Defendant No. 4 was his kept mistress and as the Will shows she had been living with him and sharing his joys and sorrows for over 45 years. It is not disputed that he had two daughters by her and these daughters were educated by him and married off to respectable and well-placed husbands. He had a cook and defendant No. 3 was the daughter of this cook. She lived in the house and St is not disputed that Shantiraja himself celebrated her marriage with defendant No. 2 and spent for it. Defendant No. 5 Jayavathi also lived with him. She was the widow of his nephew Nagaraja Kadamba who, it is admitted, would have been, according to the Aliyasanthana law, the nearest kin to him if only he had survived the testator. In fact' Shantiraja himself seems to have inherited the property left by Nagaraja. In short, all the defendants were close to Shantiraja and at one time or the other lived with him. At the time of his death defendant No. 4 and defendant No. 5 were living with him in his house. The High Court has observed that the plaintiff's family judged from the Aliyasanthana concept of inheritance would never have been the heirs of deceased testator. On the other hand, defendant No. 1 was a member of the testator's 'kutumba' or family and the old man, if he still believed In the concept of inheritance, was more likely to leave the bulk of his property to defendant No. 1 than to anybody else.

8. A perusal of the Will which is a short one would go to show that the several dispositions were not injudicious. Defendant No. 1 has been given all the lands of Irvathoor village which come under pattas 1 and 83. He is also entrusted with the management of some of his other lands in Irvathoor village coming under pattas 15, 58 and 81, the object of the entrustment being that he should perform all the customary religious viniyogs (performances) out of the income derived from those lands. These customary religious performances were to be carried out in both the villages Irvathoor and Miyar. Patta No. 91 of Penjal village which contains only small lands is also left to him with the condition that the entire produce from the lands covered by Patta No. 91 should be handed over to Ratnawati, defendant No. 3 during her lifetime. Defendant No. 1 is further enjoined to meet the entire household expenses of the second and third defendants from the income of these lands. To his mistress Janki, defendant No. 4, he bequeathed all the lands covered by Patta No. 1 of Miyar village. That was a substantial provision for defendant No. 4. He bequeathed lands covered by patta Nos. 12, and 114 of village Nallur to Defendant 5, his nephew's widow. It is true that there is no bequest in

favour of his daughters. That does not create suspicion. If as alleged in the plaint, defendant No. 4 was responsible for the fabrication of the Will with the help of others, she would have certainly seen to it that her daughters also got a large share. The very fact that the daughters were not given any property goes to show that defendant No. 4 could not have been party to any such alleged fabrication. The testator had already married off the daughters, they were well placed in life, and he might have thought that after the death of his kept mistress, defendant, No. 4, all the substantial property which was devised by him to her would automatically go to the daughters and hence there was no need for any separate provision. In other words, the High Court is right in concluding that the dispositions under the Will were neither unnatural nor unjust.

9. We have already referred to the evidence with regard to the actual execution of the Will. The Will was executed in a room in the Kolke house belonging to the testator who, it appears, had casually asked the two attesting witnesses the previous day to come to his house at noon on 10-3-1958. He had not told them what the business was. That he wanted to keep the whole matter a very well guarded secret is clear from the fact that the scribe and the two attesting witnesses came to know that a Will was being executed only when it was being actually dictated by the testator. No other member of the family living in the house was in the room. The teacher Venkataramana had come to the house, as usual, at noon and after he had taken his meal he was called inside the room. By that time the two other attesting witnesses had also arrived. The case is that the testator gave paper and a fountain pen to the scribe and asked him to write as he dictated. The scribe i.e. Venkataramana wrote to his dictation and after the dictation was finished the testator took the writing himself, read it silently and then affixed his signature with the same pen below the writing. Thereafter, the two attesting witnesses made their signatures and finally the whole writing was rounded off by the teacher Venkataramana scribing under his signature that the Will was written by him. Thereafter the party dispersed. In May next, according to defendant No. 1 the document was handed over to him by the testator when he was on a visit to Koike house and it was at that time only that defendant No. 1 came to know that it was the Will of the testator.

10. The High Court has accepted this evidence with regard to the execution of the Will. It had been contended before it that the scribe and the attesting witnesses were not disinterested independent witnesses and, therefore the evidence should not be accepted. The High Court has repelled that contention and was of the view that the interest of these persons was not such that they would be party to a fabricated Will. Venkataramana was a teacher in the Primary School and did not belong to the village. His village was about 5 miles away but being a teacher in the Irvathoor School he had to come to school every morning from his own village and return in the evening. In the mid-day, however, he did not return to his house and it appears that the testator who was a rich and charitably disposed man and a respected Patil of the village must have requested the teacher to take his lunch at his place and that was how the teacher was visiting the Koike house at noon every day. He continued to be a teacher in that school even after the death of the testator and defendant No. 1 and defendant No. 4 continued the same facility to him as the testator had done. It is not shown that he was in any way interested in the parties to the suit. In fact he knows very little about the family affairs. The attesting witnesses also are not shown to be so much interested in the defendants that they should agree to the fabrication of the testator's Will. Dharampal Kadamba is. the resident of the Miyar village and is also now the President of the Village Panchayat. He was not a local man. He had

no property of his own at Miyar. But it seems he owed his position as the village Patil to the testator. The testator had stopped living at Miyar and had shifted to Irvathoor. Dharampal was asked to live in the Miyar house and it appears that a land and a small garden piece were given to him-the consideration being that he should stay in the place and perform all the 'Viniyogas' it was the testator's custom to do. We can, therefore, say that he was a man in the confidence of the deceased testator and it won't be surprising that he was called to attest the Will. The defendants have continued to give him the same facilities as the testator had done and it cannot be said that the defendants have conferred upon him such benefits that he will agree to fabricate the Will. The other attesting witness Anantraj Kadamba who lived in Irvathoor itself is still more disinterested. He was merely a tenant of one or two lands of the testator. He was a tenant before and continued to be a tenant after the death of the testator. One of the lands was on mulgaint tenure from the time of the testator. That means that the tenure was of permanent tenancy. In short, no benefit has been conferred by the defendants upon these three important witnesses which they had not enjoyed In the testator's own lifetime for several years. It had been contended in the written statement that defendant No. 4, the aged kept mistress, was chiefly instrumental in fabricating the Will with the help of the other defendants, the scribe and the two attesting witnesses. At the time of the argument defendant No. 1 was made the villain of the piece. It was argued that defendant No. 1 after having conspired with the rest to fabricate the Will arranged with the scribe and the attesting witnesses that when the time came to give evidence they should say that defendant No. 1 was not present at all at the time of the execution of the Will, so that the suspicion of procuring the Will in his favour would be completely avoided. But the pity of it is that when defendant No. 1, the scribe and the two attesting witnesses were in the witness box there was not even a suggestion to them that they had conspired to forge the Will and that the Will was forged by them after the death of the testator. The High Court after a detailed consideration of the evidence has come-to the conclusion that the witnesses with regard to the execution of the Will are reliable and we have no good reason to think otherwise.

11. On that finding it is not necessary to consider some other small points which were argued in the case. Those points had been argued before the High Court and the High Court, for good reasons, had repelled them all. A reference was also made to the evidence of the handwriting experts. On behalf of the plaintiffs, Mr. C.M. Reghelini, a handwriting expert from Madras was examined to show that the disputed signature was not of the testator. On behalf of the defendants, Mr. C.T. Bhanagay of Nagpur who is a Government Criminologist and Additional Government Examiner of Questioned Documents for certain States was examined as expert witness. He gave his opinion that the disputed signature on the Will was of the testator. Both the witnesses did not know Kannada or the Kannada script The Trial Court, therefore, rejected the evidence of both. The High Court was not agreeable that on that ground alone their evidence should be rejected. So far as Mr. Reghelini was concerned it was noticed that he had compared the disputed signature of the testator with some other signatures alleged to have been of the testator but which were not proved in Court. When the admitted signatures were shown in the witness box, he obviously called for additional signatures for further comparison the implication of which was that he could not make up his mind by a mere look at the admitted signatures in the witness box whether the disputed signature was made by the person who had made the admitted signatures. Naturally Mr. Reghelini's evidence was of little help. The learned Judges, who apparently know Kannada and also the Kannada script, were inclined to accept Mr.

Bhanagay's evidence as more reliable. Mrs. Pappu appearing on behalf of the appellants before us contended that there were more pen lifts In the disputed signature than in the admitted signatures which had been compared by Mr. Bhanagay. But Mr. Bhanagay himself when he was in the witness box was not cross-examined about the case. We have also, for ourselves, scrutinized the signatures as well as we could, and we think that it is not possible to disagree with the view taken by the High Court in this respect.

12. The result, therefore, is that the conclusion arrived at by the High Court regarding the genuineness of the Will is correct and the appeal must, therefore, fail. It is dismissed with costs.