

**In the Court of Principal District and Sessions Judge , Pudukkottai.**  
**Present:Thiru.A.Abdul Kadhar, B.A., B.L.,**  
**Principal District Judge, Pudukkottai**  
Tuesday the 3<sup>rd</sup> day of January, 2023

**T.O.S.No.223/2021**  
**(CNR No.TNPD010016432021)**

R.Balakrishnan

.... Petitioner/Plaintiff

**//Versus//**

1. R.Manikandan  
2. Vijayakumar  
3. Mangayarkarasi

.... Respondents/Defendants

This suit came before this court on 26.09.2022 in the presence of Thiru.C.Jegadeesan, Advocate for the Petitioner/Plaintiff and of Thiru.M.Muthamilselvan, Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondents/1<sup>st</sup> and 2<sup>nd</sup> Defendants and Thiru.M.Gulam Nabi Azad, Advocate for the 3<sup>rd</sup> respondent/ 3<sup>rd</sup> defendant and upon hearing on both sides argument and on perusal of records this court today delivers the following ..

**JUDGMENT**

The suit is filed by the petitioner/plaintiff prays to declare the Will deed executed by one Jayalakshmi on 05.02.2017 is valid as per law and to direct the defendants to hand over the properties allotted to the plaintiff and other reliefs.

**2. The brief contentions in the Plaint is as follows:-**

The suit schedule property was originally belonged to one Jayalakshmi who is the mother of the plaintiff and the defendants. The plaintiff and the

defendant's father was Ramasamy and their mother was Jayalakshmi. The defendants No.1 to 3 are brothers and sister of the plaintiff respectively. The suit property was purchased by the plaintiff's mother Jayalakshmi with her own money through a registered sale deed dated 04.02.1985 and later she constructed a house building therein at her own expenses and was living with her husband and the plaintiff and the defendants. In this situation, after the death of the plaintiff and the defendant's father Ramasamy Aliyar, their mother Jayalakshmi Ammal was under the protection and maintenance of the plaintiff. The defendants No. 1 to 3 are living separately with their family after their marriage. In this situation, the mother of the plaintiff, Jayalakshmi Ammal, has executed a will deed in the presence of proper witnesses on 05.02.2017, in order to avoid problem in partitioning the assets after her death. According to the said will, the plaintiff has to acquire the occupied house and its basement mentioned in the 1<sup>st</sup> item of the property and the 3<sup>rd</sup> defendant has to acquire the vacant plot on the south side behind the house, and the vacant plot at the front is to be equally divided by the 1<sup>st</sup> defendant and the vacant plot at the back by the 2<sup>nd</sup> defendant and to leave 3 feet wide lanes as common possession for the plaintiff and defendants. Further in the said Will it was mentioned that the 2<sup>nd</sup> item of the properties at Orathanadu Taluk, Neyveli should be equally shared among the

plaintiff and the defendants No.1 to 3. The said Jayalakshmi Ammal, who is the mother of the plaintiff and defendant was maintained by the plaintiff in the 1<sup>st</sup> item of the suit property till her death. After the death of the said Jayalakshmi Ammal on 25.04.2017, when the plaintiff went to Chennai for his business and when the plaintiff's wife was staying at her mother's house during her maternity period, the 1st defendant, after knowing the details of the will deed executed by the said Jayalakshmi, came and settled in the ground floor of the said house in an intention to occupy the said house. After knowing the above information, the petitioner orally demanded them to hand over the house as per the said will deed executed by his mother. But the defendants knowing all the details of the said will, deliberately denying the said house and property with bad intentions. Later the plaintiff had sent legal notice to the defendants No.1 to 3 and the same was received by them and sent reply notice but not handed over the properties to the plaintiff. Hence the plaintiff prays to declare the Will deed executed by one Jayalakshmi on 05.02.2017 is valid as per law and to direct the defendants to hand over the properties allotted to the plaintiff and other reliefs.

**3. Written statement filed by the 1<sup>st</sup> Respondent which was adopted by the 2<sup>nd</sup> Respondent in brief as follows :-**

The suit filed by the plaintiff is false, frivolous and not maintainable in law. All the averments made in the plaint are denied and false except that those

that are admitted herein and the plaintiff is put to strict proof thereof. It is true that the plaintiff and the defendants are brothers and sisters and their father was one Ramasamy Aliyar and their mother was Jayalakshmi Ammal. It is completely wrong that the mother of the plaintiff and the defendants Jayalakshmi Ammal purchased the item No.1 of the property with her own money through a registered sale deed dated 04.02.1985. Because the father of the plaintiff and the defendants Late.Ramasamy Aliyar was working as a Deputy Director of the Industries Department of the Government of Tamil Nadu and retired in the year 1997. During his period of service, out of his own income, on 04.02.1985, out of love and affection for his wife, he purchased a sale deed in the name of his wife, Jayalakshmi. Right from the beginning of marriage of the plaintiff's father Ramasamy and till the time of his death, his wife Jayalakshmi was a house wife. Therefore the said Jayalakshmi does not have any personal income. Therefore, the claim that the 1st item of the property was purchased with the own income of Jayalakshmi, the mother of the plaintiff and the defendants is completely wrong. The plaintiff is liable to prove the same. In the meanwhile, the said Ramasamy, the father of the defendant at the time of purchase of the 1<sup>st</sup> item of the property, there was two tiled house present in it and he demolished one of the houses and obtained a loan from LIC

for constructing a roof house in it in the year of 1988-1989 and the house was built and he lived with his wife, the plaintiff and the defendants No.1 to 3. In the year of 2011 the father of the plaintiff and the defendants Ramasamy Aliyar died, at that time the defendants No.1 to 3 have got married. After the death of their father, the 1<sup>st</sup> defendant lived in the new house with his wife, the plaintiff and their mother Jayalakshmi together. Therefore, it is absolutely wrong that their mother Jayalakshmi living under the care of the plaintiff. Because this 1<sup>st</sup> defendant got married his own maternal uncle Gandasamy's daughter. Therefore the mother of the plaintiff and the defendants lived under the care of the 1<sup>st</sup> defendant and his wife. Further it is false that the as stated in paragraph 2 of the petition, mother of the 1<sup>st</sup> respondent, had executed a will on 05.02.2017 in order to avoid the clashes between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents. On 11.09.2021, the petitioner and the 3<sup>rd</sup> respondent and his sister Mangayarkarasi's daughter only got married. The said Jayalakshmiammal lives with the 1<sup>st</sup> respondent and his wife as a joint family in the house built by their father, and the petitioner was working as a computer engineer in Chennai and came to Pudukkottai from time to time. In this situation, since the 1<sup>st</sup> respondent works in the cooperative sector, although the petitioner has worked in Chennai, and the 2<sup>nd</sup> respondent was living separately, the 3<sup>rd</sup> respondent

i.e. the sister of the 1st respondent, was getting the pension amount and invested in the bank and helps her. Since the 3rd respondent is the sister of the 1st respondent he allowed her to buy pension for his mother and to go for the bank and treasury etc. It later came to know that the 3rd respondent Mangaiyarkarasi also took possession of Rs.11,00,000/- out of the monthly pension which she had been drawing continuously after the death of his father. Further it was came to know that the 3rd respondent Mangaiyarkarasi also took little by little from time to time the 1st respondent's mother Jayalakshmiammal's 70 sovereigns of gold jewels which was kept in the bureau. Out of the said 70 sovereigns, also included 11 sovereigns worth of jewels given to the 1st respondent's grandmother i.e. Jayalakshmiammal from her mother, after her death in 2009, The said 11 sovereigns and the remaining 3 sovereigns of gold jewels were taken by the respondent Mangayarkarasi by expressing her wish that she would make new gold jewels. The petitioner and his wife and the 3rd respondent conspired and took away the jewels which has to be owned to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Thus, all the jewels secretly taken away by the 3rd respondent from the house of the 1st respondent was known to the retired teacher Govindhan, teacher Ilango, teacher Selvaraj, ie., the 1<sup>st</sup> petitioner's uncle, who are residing near his house. Now, the 1<sup>st</sup> respondent's

jewels and the petition scheduled property documents were kept in a bureau under the custody of the common man teacher Ilango. The wife of the petitioner was accompanying the 3<sup>rd</sup> respondent's misbehavior. Therefore, the 3<sup>rd</sup> respondent, the petitioner, and his daughter, ie., the petitioner's wife, conspired to take advantage of the ill health of the mother of the 1<sup>st</sup> respondent Jayalakshmi ammal to sign a document to be given to her in the treasury and fraudulently obtained her signature in the will on a white blank paper. The petitioner and the 3<sup>rd</sup> respondent's daughter jointly created a fake will for the newly built house where the 1<sup>st</sup> respondent has been living with his wife since his father's time. Also on the first evening of 25.04.2017, the day of the death of the 1<sup>st</sup> respondent's mother, the 3<sup>rd</sup> respondent took his mother from the house of the 1<sup>st</sup> respondent at Pudukkottai Town, North 4th Street, to the house of the 3<sup>rd</sup> respondent, Pudukkottai Town, Venkateswara Nagar. Later the milk vendor informed the 1<sup>st</sup> respondent that his mother died in the house of the 3<sup>rd</sup> respondent at Pudukkottai Town, Venkateswara Nagar. It is very doubtful for this respondent since they have not informed the death of his mother. Since the petitioner and his wife and the 3<sup>rd</sup> respondent have misappropriated the 70 sovereigns of gold jewels from the bureau of the deceased Jayalakshmi ammal and her pension of Rs.15,000/- p.m., totally Rs.11,60,000/- , the will created by

them clearly proves that the will is a forged document. Therefore, it is the duty of the petitioner to prove that the will was really executed by Jayalakshmiammal. Further the sale deed in the name of the deceased Jayalakshmiammal and the other documents were kept in the bureau of Jayalakshmiammal was under the custody of the petitioner and his wife and the 3<sup>rd</sup> respondent. As the petitioner is also working in Chennai he has filed a petition falsely showing the address of Venkateswara Nagar where his mother-in-law i.e. the 3<sup>rd</sup> respondent Mangaiyarkarasi resides. Also, the will has to be probated and it is applicable to metropolitan cities. The petitioner has filed this petition against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the partition and declaration based on this fraudulently prepared will. The Item No.2 of the petition schedule property was originally belonged to the petitioner and the respondents No.1 to 3's mother, i.e., the deceased Jayalakshmiammal. Hence, after her death the said property belongs to both the petitioner and the respondents No.1 to 3. Hence this respondent prays to dismiss the suit with cost .

**4. Written statement filed by the 3<sup>rd</sup> Respondent in brief as follows :-**

All the allegations made in the petition is false except those which are specifically admitted herein by this respondent and the petitioner is put to strict proof thereof. It is true that this respondent's father had purchased the property

in the name of the respondent's mother and constructed a house building therein and he has executed a Will deed in the year of 2008. The petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are brothers of this 3<sup>rd</sup> respondent. During the lifetime of his father, the petitioner and the respondents got married and he had given some lakhs of amount for their business purposes. After the marriage of the 2<sup>nd</sup> respondent in the year of 2001, he lived with his father and mother. Later, he went separately and while he was leaving he got some lakhs of money from his father for the construction of his house. Further his father had given some lakhs of amount for the 1<sup>st</sup> respondent's video coverage business and the 1<sup>st</sup> respondent's wife was given teacher training education in a private institute by spending lot of money and his father was also maintaining the family expenses. The petitioner was working in Chennai after his studies. Since he was not married and no expenses given to him the said Will deed has been executed. As per the will deed, the petition scheduled house was allotted to the petitioner and the vacant site was allotted to the respondents No.1 to 3 and these facts are very well known to all of them. At the time of writing the Will deed, this respondent's father called everyone and revealed the contents of the will deed and the respondents No.1 to 3 also accepted the same. After the death of their father, since the properties were standing in the name of their mother, the

petitioner and the respondents states that the will deed executed by their father is not valid and the 1<sup>st</sup> and 2<sup>nd</sup> respondents make a quarrel for the will properties. When this respondent's daughter was given in marriage to the petitioner and lives with the mother, Manikandan and his wife tortured Balakrishnan and his wife and hence her daughter returned back to this respondent's house. Later the 1<sup>st</sup> and 2<sup>nd</sup> respondents tortured this respondent's mother to register the property in their name and she refused and told that they are entitled for the properties as per the will deed executed by their father. Hence the 1<sup>st</sup> and 2<sup>nd</sup> respondents continuously tortured this respondent's mother. It is false that this respondent had obtained the jewels and the pension amount of their mother. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have voluntarily saying these false statements and they are put to strict proof thereof. Since this respondent's father had not given any money for the business and house to the petitioner, as that of the 1<sup>st</sup> and 2<sup>nd</sup> respondents he had executed a Will deed infavour of the petitioner and the petitioner and the respondents No.1 to 3 also accepted the same. Later the 1<sup>st</sup> and 2<sup>nd</sup> respondent act as against the will since the property stands in the name of their mother and they were stating false statements and that was not happened so. The allegations as against this respondent made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents are false and he had not obtained

any jewels or pension amount of their mother. Hence it is prayed to pass suitable orders for the petition filed by the petitioner.

5. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.7 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.6 were marked.

**6. Point for Determination :-**

1. Whether the Will under Ex.P.3 dated 05.02.2020 is true, valid and executed by the deceased Jayalakshmi with the sound state of mind ?
2. Whether the petitioners are entitled for issuance of probate as prayed for ?
3. To what other reliefs the parties are entitled to ?

**7. Point No.1:-**

In the present suit, originally the petitioner / plaintiff has filed a probate O.P.No.52/2018 for probating the will dated 05.02.2017 and after finding the present case is the contentious one, the case was converted as a Testamentary Original Suit by order dated 03.12.2021 in terms of Section 295 of Succession Act. With the above brief note, the petitioner / plaintiff has filed a probate O.P. claiming that the properties are belonging to the mother Jayalakshmi of the

plaintiff and the defendants and the parties are brothers and sisters among themselves. The plaintiffs claim, the deceased Jayalakshmi being the mother of the parties have purchased the suit property on 04.02.1985, by way of registered Sale deed with her own fund and constructed house and was living in the said house along with her husband and the parties to the suit. In the said premise, the Jayalakshmi was in a care and protection of the plaintiff / petitioner and after the marriage of defendants No.1 to 3 have left the joint family and they are living separately and the Jayalakshmi on 05.12.2017, to avoid all the disputes after her demise in respect of the properties with the intention to settle all the properties have bequeathed a Will by granting the 1<sup>st</sup> item of the suit property namely the house and a vacant site to the petitioner / plaintiff and the other vacant site to the respondents / defendants and also she has stated that the property in Orathanadu Taluk, Neyveli shall be divided equally among themselves and the deceased Jayalakshmi was maintained by the petitioner / plaintiff when the petitioner / plaintiff was living away in Chennai, the 1<sup>st</sup> defendant / 1<sup>st</sup> respondent by knowing the Will have trespassed into the house and occupied the ground floor in spite of the intention of the testator Jayalakshmi.

8. Per contra, the respondents have resisted the petition by specifically

denying the averments in the petition / probate by saying that Will is a cooked up one and it was created by getting signature from the deceased Jayalakshmi. The respondent also have resisted the application by saying that by admitting the facts with regard to the purchase of the property in the name of Jayalakshmi, but they would claim that the property was purchased by her father by his own funds and after making several allegations as against the petitioner, the plaintiff and the 3<sup>rd</sup> respondent being her sister and the mother in law of the petitioner / plaintiff by saying that he have taken all jewels of the deceased Jayalakshmi to the extent of 70 sovereigns and Rs.11,60,000/- namely the pension amount and they would claim that no probate can be granted. The 3<sup>rd</sup> respondent who is the sister of all the parties have supported the case of the petitioner and stated that there was no collusion and hence probate can be granted.

9. Having regard to the nature of issues, though the probate O.P. was converted as a suit, I am not traversing upon the other factors traced by the defendants No.1 and 2 regarding the money claimed by them and other alleged activities of the plaintiff and the 3<sup>rd</sup> defendant and the one and only issue can be decided in the present suit is that with regard to the validity of the Will. Though the probate O.P. is converted as a Testamentary Original Suit, u/s.295 of Succession Act, it can never be considered as a regular suit by deciding all the

inter-se disputes between the parties. In the present case, though it was converted as a suit, the proceedings can be taken as nearly as possible in the form of suit not as a proper suit for declaration of right of the parties. Hence I am not deciding the other contentions raised by the respondents / defendants but for the validity of the Will and entitlement of the parties dehorse the Will. To take such a view I am only following the judgment of the ***Division Bench of Hon'ble Madras High Court in Philo Peter And Anr. vs Divyanathan And Ors.1988 2 MLJ (1) in para No.3, 4 ,12*** had held as follows :

*"3. Before considering the legal position emerging out of the above said decisions, it is necessary to take notice of the relevant provisions in the [Indian Succession Act](#) (1925), [Section 226](#) of the Act provides that the District Judge shall have, in relation to the granting of Probate and Letters of Administration, all the powers and authority as are vested in him in relation to any civil suit. [Section 288](#) lays down that the proceedings of the Court of the District Judge shall, save as otherwise provided, be regulated, so far as the circumstances of the case permit, by the Civil Procedure Code. A proceeding for probate is initiated by the presentation of an application in that behalf. What are the matters which should be mentioned in such an application, is provided in [Section 276](#). Similarly, a proceeding for Letters of Administration is initiated by an application as provided in [Section 278](#). [Section 295](#), which is the important section to be considered in these proceedings reads as follows:*

*If any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit,*

*according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.*

*[Section 299](#) provides for an appeal against every order made by the District Judge.*

*4. Before construing the scope of [Section 295](#) of the Indian Succession Act, it is better to refer Order 25 of the Rules of the Original Side of the High Court, Madras of 1956. It relates to the Testamentary and Intestate matters and prescribes a procedure for granting Probate or Letters of Administration or succession certificate. It contains separate provisions for contentious and non-contentious matters, relating to Wills. A Will may be proved either in common form or in solemn form. In a case where the petitioner wants to prove the Will in common form, it is enough if he files the Will along with the affidavit of attesting witness. There is a provision for issuing public notice and also notice to the interested parties. In such cases, anybody intending to oppose the issue of Probate or Letters of Administration, may enter caveat under Rule 51 of Order 25 of the Original Side Rules and file an affidavit in support of the caveat under Rule 52 within eight days of entering the caveat stating the grounds of objection to the grant of Probate or Letters of Administration. On such contest being made, the proceeding, which was originated by the original petition, is converted into T.O.S. In such a case, the plaintiff is bound to pay the required court-fee as provided in [Article 11 \(k\)](#) of Schedule II of the Tamil Nadu Court-Fees and [Suits Valuation Act](#), 1955. Therefore, here, we find that there is*

*a definite procedure prescribed for converting the petition into a regular suit, in which case the liability for payment of court-fee is automatically attracted.*

*12. The question relating to the meaning of the words "as nearly as may be" used in [Section 295](#) of the Indian Succession Act has to be understood in the context in which it is used in the Act. A perusal of [Section 295](#) of the Indian Succession Act, 1925, which corresponds to [Section 261](#) of the Indian Succession Act of 1865, itself indicates that such a proceeding is not a suit. Since the Legislature did not treat the proceeding itself as a suit, it was found necessary in [Section 295](#) of the Act to lay down that such proceeding should, as nearly as possible, taken the form of a regular suit. In this connection, we have to give special meaning to the words "as nearly as may be" in the section. The use of the said words itself indicates that the proceeding in question was not considered to be exactly the same as a suit. Again, we have to notice that the fact that the section itself directs that such a proceeding shall take the form of a regular suit, indicates that in substance it is not a suit. It is evident that the Legislature thought fit to make a distinction between a regular suit and the proceedings under [Section 295](#) of the Act. As there is basic difference of the two proceedings, it was found necessary to direct that one was to take the form of the other. It is also significant to note that such a direction regarding the change of the, form is to be adopted only in cases where there is contention. Therefore, when there is no contention, the change of form contemplated in [Section 295](#) of the Act does not come into operation and the proceedings fully retain their initial form. These principles have been elaborately considered by a Full Bench of the Allahabad High Court in [Panzy Fernandas v. M.F. Queoros \(F.B.\)](#) and the learned Judges came to the same conclusion. We are in respectful agreement with the reasonings of the learned Judges who decided the said*

case."

10. By following the above judgment of the Division Bench of the Hon'ble High Court that the only issue that can be decided is the validity of the Will and not other disputes. Hence, I have not even framed issues / points with regard to any other point except with regard to the validity of the Will. Hence I am proceeding to decide the validity or otherwise of the Will alone.

11. Now as a overturn that the petitioner / plaintiff's contention is that the Jayalakshmi died on 25.04.2017 and it was claimed Ex.P.3- Will executed on 05.2.2017 before 2 ½ months from the date of death of the deceased Jayalakshmi. Though the respondents disputed about the entitlement of Jayalakshmi regarding her right to execute the Will by saying that the property was purchased by her father but D.W.1 the 1<sup>st</sup> defendant in his cross examination has stated as follows :

“ வழக்கு சொத்திற்கான உரிமை ஆவணங்கள் அனைத்தும் என் தாயார் பெயரில் தான் உள்ளது என்றால் சரிதான். என் தாயார் ஆவணம் ஏதும் எழுதி வைத்திருந்தால் அந்த ஆவணத்தின்படி நடந்து கொள்ள எனக்கு எந்த ஆட்சேபணையும் இல்லை என்றால் என் தாயார் அவ்வாறு ஆவணம் எதுவும் எழுதி வைக்கவில்லை.”

D.W.2, the 2<sup>nd</sup> defendant had stated as follows :

“ வழக்கு சொத்து என் அம்மா பெயரில் கிரையம் ஏற்பட்டு வீடு கட்டப்பட்டுள்ள சொத்து என்றால் சரிதான். எனது அம்மாவிற்கு வீட்டை யாருக்கு வேண்டுமானாலும் உயில் எழுதி வைப்பதற்கு அதிகாரம் உண்டு என்றால் சரிதான்.”

12. Having regard to the above admission of the parties I hold the contention with regard to defendants No.1 and 2, I hold that since the title of the Jayalakshmi is admitted and even otherwise, I hold the issue / point is narrowed down (though it may not be necessary) with regard to the validity or otherwise of the Will.

13. The learned counsel for the respondents No.1 and 2 would contend that the will is surrounded by suspicious circumstances such as forgery and though they are not disputing the signature contained in the Will that would claim that the Will was cooked up by obtaining a signature of the deceased Jayalakshmi and the respondents would claim the following are the circumstances which are shrouding suspicion over the Will and they claim there are peaking clouds of suspicious circumstances and hovering over the Will in question.

i) The profounder has taken active role in execution of Will.

ii) The Will was drafted in secrecy without informing the other legal representative of the deceased Jayalakshmi.

iii) There was a "X" mark in the Will near the signature of the deceased Jayalakshmi which shows that the document was cooked up.

Iv) There was an unequal disposition of property among the legal representative without saying any specific reason.

14. By claiming the above circumstances, that the learned counsel would submit the Will is swathed by suspicion. The learned counsel for the respondent also relied upon the judgment of the **Hon'ble Supreme Court in Moorthy and Others Vs. C.Sarathambal AIR 2002 SC 167 and 2011 CTC 287 in Govindarajan Vs. Leelavathi** for proportion that the Will is to be proved beyond all suspicion as it was executed by the testator and there should be to prove the testator had signed the document after understanding the recitals and if the attesor is the relative of the beneficiary, then the Will has to be viewed with suspicion.

15. Before delving into the question of execution, that whether the Will is shrouded by suspicion has to be taken into consideration.

16. First let me consider the question with regard to the fact, the propounder himself have taken active role in the execution of Will and whether the same has confirmed substantial benefits if that be the circumstances, then that Will may in few circumstances be viewed with a suspicion and in the

present case that the Will was drafted by Archana - P.W.1 who is the wife of the petitioner / plaintiff - R.Balakrishnan and hence the learned counsel for the respondent No.1 and 2 would submit since she has played active role and she herself signed in the document, Will has to be viewed with a suspicion.

17. But the learned counsel for the petitioner / plaintiff would submit that she is neither a beneficiary nor a legal representative of the deceased and hence that the question that the propounder claiming under the Will have taken active role in preparing the will is not subsisting and we cannot suspect the Will on that ground.

18. Though the above claim of the plaintiff can be technically correct as she is neither a propounder nor a legal representative of the deceased Jayalakshmi, but she is the wife of P.W.1 and she scribed the Will and also examined herself as P.W.1 in the place of her husband by claiming the benefit of Section 120 of Indian Evidence Act. Hence, I am relating the P.W.1 - Archana to hold that though she is not the propounder but she has taken active role by scribing the will and in the place of the petitioner / plaintiff. In other words, though the propounder has not actively participated, but P.W.1 being his wife has actively participated in the execution of Will claimed by the plaintiffs. But merely because, the wife of the propounder / plaintiff has taken active role

whether the Will has to be viewed with suspicion has to be taken into consideration. To test in the said view, the judgment of ***Hon'ble Supreme Court in Kavita Kanwar vs Mrs. Pamela Mehta 2020 SCC Online SC 464 in para No.22*** had held as follows :

*"22. As noticed, the basic point for determination in this appeal is as to whether the Trial Court and the High Court were justified in declining to grant probate in relation to the Will dated 20.05.2003 as prayed for. Obviously, a just and proper determination of this point would revolve around the legal principles applicable as also the relevant factual aspects of the case. Before entering into the factual aspects and the questions in controversy, appropriate it would be to take note of the applicable legal provisions and principles concerning execution of a Will, its proof, and its acceptance by the Court."*

19. As per the above judgment, that can not hard and fast rule that once the propounder have played an active role that cannot be the only ground to suspect the will as it is shrouded by suspicion. But it can also be taken as a factor to decide the genuineness of the will and the court has to be cautious as the propounder has some benefits in view of bequeathing of the Will. In the present case, that admittedly, the propounder have obtained a building with constructions others have been given only with the vacant site. Hence the above circumstances has to be viewed in the parlance of other circumstances.

20. The next out turn would be regarding that the attestors of the Will are

relatives of the P.W.1 and the 3<sup>rd</sup> respondent (from her husband's side) and none of the family members of the plaintiff or the defendants have been called either to attest or to consult regarding execution of Will though it was claimed to have been carried out in the house in which she resides especially when she has two sons who are residing nearby and the learned counsel would state that the attestors are the close relatives of the P.W.1 and the 3<sup>rd</sup> respondent through her husband and P.W.1 has answered as follows :

“ உயில் எழுதும்போது சாட்சிகள் உடன் இருந்தார்கள். ஒருவர் என்னுடைய பெரியப்பா (பத்திர எழுத்தர்) மற்றும் அவரது நண்பர்”

21. The respondents relied upon the same, why the person who is distantly related to the family and his friend was called upon to prepare the Will especially when the other relatives are available and the learned counsel for the respondent would rely upon the admission of P.W.2 who is the attestor and elder father of the P.W.1 regarding the presence of other persons in the authority which reads as follows :

“3ம் பிரதிவாதியின் குடும்பம் வடக்கு 4ம் வீதியில் வழக்கில் சம்பந்தப்பட்ட சொத்தில் 40, 50 வருடங்கள் குடியிருந்தார்கள் என்றால் சரிதான். வடக்கு 4ம் வீதியில், சுமார் 1000 வீடுகள் இருக்கும் என்றால் சுமார் 500 வீடுகள் இருக்கலாம்.

40, 50 வருடங்களாக அதே இடத்தில் இருப்பதால் அந்த வீட்டிற்கு அருகில் ரொம்ப நாள் பழக்கம் உள்ளவர்கள் அருகில் இருக்கிறார்கள் என்றால் அருகில் உள்ளவர்கள் அதிகம் படித்தவர்கள், அந்தஸ்து உள்ளவர்களா என்றால் எனக்கு தெரியாது. நான் என் தம்பிக்கு திருமணம் செய்த பிறகுதான் வடக்கு 4 ம் வீதிக்கு போய் வருகிறேன். சுமார் 12 வருடங்களாக விசேஷங்களுக்கு போய் வருவேன்.”

22. From the above evidence the learned counsel for the respondent would rely upon that when the family was residing for more than 40 to 50 years in the said locality why a person who is the relative of P.W.1 through her father and his friend has to be called upon to attest the Will is the mystic question remains unanswered.

23. The learned counsel for the respondent had contended that the will is a cooked up document and the signature was obtained by getting signature is the contention. Though in normal circumstances that cannot be viewed with suspicion but, here is the case admittedly that there were two sons for the deceased Jayalakshmi. Why and when there was no rift in the relationship, why the friends, neither any of the relatives of the deceased Jayalakshmi have not been called for the purpose of attestation of Will is the serious question and the learned counsel would rely upon the judgment of the **Division Bench of**

**Hon'ble High Court in 2011 (5) CTC 287 Jeyalakshmi vs Selvaraju in para No.4 had held as follows :**

*4.It is found that the appellants in all the second appeals are the daughters of Sahadeva Gounder. The respondent in all the second appeals is the son of Sahadeva Gounder. The relationship between the parties as above referred is not in dispute. On the materials placed, it is found that following the dispute between Sahadeva Gounder and his son namely the respondent herein, in respect of the suit properties involved in all the second appeals, it is found that a suit in O.S.No.896 of 1994 had been laid by Sahadeva Gounder on the file of the Principal District Munsif Court, Cuddalore against the first respondent herein for declaration of his title to the same and also for recovery of possession. Alleging that, the first respondent had obtained a fraudulent document from him thereby taking a major portion of the suit properties and also throwing him out of the house and that he was made to believe that only a Will is being executed. The first respondent had taken a plea that the document impugned had been executed by his father Sahadeva Gounder on his own volition and with full knowledge about the nature of the document and the same is binding upon him and therefore sought for the dismissal of the suit laid by Sahadeva Gounder in O.S.No.896 of 1994. The said suit, after contest, came to be dismissed.*

24. By relying upon the said passage, he would claim that the evidence of P.W.2 has to be viewed in very suspicion as though the P.W.2 was related to P.W.1 being his elder father, but in so far as deceased Jayalakshmi is concerned,

is related only by way of marrying the 3<sup>rd</sup> respondent to his brother who is not also alive now and another attesor of the Will is also his friend also pleads some doubt over the circumstances under which the Will was executed and for the same there was no answer on the side of the plaintiffs.

25. The next out turn would be regarding the execution of will by the deceased on the premise that her son Balakrishnan who is the plaintiff was maintaining her is the contents of the Will and hence he is given a share considering his deeds by giving a house with the site. The relevant portion of the Will - Ex.P.3 reads as follows :

“ எனது கணவர் 2011 ஆம் ஆண்டு இறந்தபிறகு எனக்கு தேவையான உதவிகளையும் ஒத்தாசையும் எனது மகன் பாலகிருஷ்ணன் செய்து வருவதால் நான் குடியிருந்து வரும் வீடும் சேர்த்து அது அமைந்துள்ள பகுதி முழுமையும் பாலகிருஷ்ணன் அடைந்து கொள்ள வேண்டியது.”

26. According to the above recitals, the Balakrishnan was maintaining but P.W.1 in her evidence had stated as follows :

“ 1, 2 எதிர்மனுதாரர்கள் வெளியே சென்றுவிட்டதால் என் தாயார் எனது பாட்டியை தினமும் பார்த்து வருவார் என்றால் 1 , 2 எதிர்மனுதாரர்கள் என் பாட்டியை கவனிக்காததால் என் தாயார் தான் கவனித்து வந்தார்.”

27. Even as per the evidence of P.W.1, the respondent No.3 / Mother is the person who was maintaining the deceased Jayalakshmi but the recitals of Ex.P.3 reads as if Balakrishnan was maintaining them and hence the learned counsel would contend that the contention of the Will is a cooked up one and hence it cannot be relied upon as the evidence of P.W.1 stands mutually destructive as against the contents of Will. Hence the will is a cooked up one is the core of the contention of the respondents/ defendants.

28. The above argument of the learned counsel for the respondents No.1 and 2 cannot be brushed aside as the evidence of P.W.1 is diametrically opposite to the contents of the Will. When respondent No.3 is the person who was maintaining the deceased, why the property being the house has to be given to the petitioner / plaintiff is the serious question. Hence I hold the said circumstances also stands against the genuineness of the Will.

29. The next point would be regarding the signature followed by the "x" mark is the serious question. Now in the present case that even on the perusal of the Will the signature was followed by an "x" mark which in normal circumstances, no person will search the place to be signed especially when the contents were filled. Only on getting the signature in an unfilled form or unfilled paper, the signature will be obtained by getting a "x" mark so as to fill

up the other areas without disturbing the other contents. Hence, I hold that the "x" mark in the present Will is certainly causing serious mistry over the contents of the will and the document was scribed by P.W.1 and even the signatures of the attestors seems to be an inserted one even for the naked eyes. so as to accommodate the signature of the attestors. Hence it is also a serious circumstances to be considered for deciding the execution of will or otherwise.

30. By considering the above circumstances that I have to decide the suspicious circumstances in the present case and let me cull out the ratio of *Kavita Kanwar vs Mrs. Pamela Mehta 2020 SCC Online SC 464* above referred what are all the suspicious circumstances.

- a) When it is not normal or is not normally expected in a normal situation.
- b) Not expected of a normal person.
- c) The suspicion should be real and valid suspicion and not a mere fantasy of a doubt in mind.

31. By keeping the above principles in mind, I have to appreciate the present facts of the case as referred and before delving into the facts, let me consider the judgment of the Hon'ble Supreme Court for deciding the veracity or otherwise of the Will to test the facts of the case in the line of the precedent of *the Hon'ble Supreme Court in Swarnalatha vs Kalavathy 2022 Livelaw SC*

**328 in Para No. 25 had held as follows :**

"25. The law relating to suspicious circumstances surrounding the execution of a Will is already well settled and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in *Kavita Kanwar vs. Mrs. Pamela Mehta and Ors.*<sup>1</sup> where this Court referred to almost all previous decisions right from *H. Venkatachala Iyengar vs. B.N. Thimmajamma*<sup>2</sup>. But cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in *Kavita Kanwar* (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply *Article 14* to dispositions under a Will."

32. As per the above judgment that the Will need not be suspected merely because there was no equal disposition of properties and the court has to only consider the genuineness of execution of Will and it is not necessary to see whether there was a distribution by the testator was fair and equitable to all her children and here is the case that though there was no equal distribution and I am not also suspecting the Will on the said ground of unequal distribution of will.

33. In yet another decision of the **Hon'ble Supreme Court in Shivakumar vs Sharanabasappa (2021) 1. L.W. 97 in Para No.19 had held as follows :**

*"19. 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."*

34. By considering the above judgment, that the facts of the present case can be appreciated to decide the veracity or otherwise of the Will which are as

follows :

i) The Will was drafted by claiming two persons are attestors and one of them are stranger to the testator and another one is the close relative of P.W.1 who is also a scribe.

ii) The Will was said to have been drafted in the house of the deceased Jayalakshmi where the respondents No.1 and 2 are also were residing when the recitals of Will do not speak of any strained relationship between the deceased and their sons and she has also chosen to allot properties in the Will (as per the recitals).

iii) The scribe being the wife of the propounder have taken active role to play by scribing the Will.

(iv) Adding to the circumstances that there was a contradiction between the maintenance of the deceased Jayalakshmi even as per her own evidence.

(v) There was a "x" mark preceding the signature of the deceased Jayalakshmi which will not be normally found place in a filled paper unless until it was obtained in a unwritten paper / form or the person who is signing the document is not aware of the contents and hence, the "x" mark stands against the common prudence.

(vi) Even on the bare perusal of Will, it was prepared in a plain paper and

even the signature of the attesor seems to be inserted for the naked eyes which makes the Will wrapped with suspicion.

35. If the above circumstances are considered in simultation, that will not affect the veracity of the Will but if considered in cumulation, that will certainly makes the will suspicious. I am also not expecting the propounder to prove the Will by mathematical certainty. But the will has to be proved interms of essential eternal under the statute and on the above circumstances that the court has a legitimate suspicion that the Will could not have been executed by the deceased Jayalakshmi as prayed by the propounder / the petitioner / plaintiff. Hence, I am not in a position to hold the Will was directly executed by the deceased, as it was surrounded by thick flow of suspicious circumstances as the probate proceedings being a judgment in rem cannot be given for mere asking and the propounder has to explain all the circumstances which are claimed to be suspicious and the plaintiff / petitioner have failed in his attempt to prove the will. Hence I hold the point No.1 has to be answered as against the plaintiff / petitioner. The point is answered accordingly.

**36. Point No.2 :-**

In view of the answers to Point No.1 , I hold, the plaintiff / petitioner is not entitled for issuance of probate claimed by him. The point No.2 is answered

accordingly.

**37. Point No.3 :-**

In so far as this point is concerned being the residual point / issue the matter has to be viewed in the broader perspective. As already narrated, the parties / the petitioner / plaintiff and the respondents / defendants are brothers and sisters among themselves and there was no dispute with regard to the fact all the four are entitled to succeed the estate of the deceased interms of Section 15 of Hindu Succession Act in equal apportionment being the sons and daughter and that I have already held the Will was not proved in the manner known to law and it was sought to be relied that the deceased Jayalakshmi have executed the Will.

38. But in the passage of deciding the veracity of the will I have decided the case only on the preponderance and probabillities of the evidence. But now dehorse the Will, the parties are entitled to equal share in the property. It is easy for me to dismiss the suit by saying that probate cannot be granted as there was a contentious issue and the Will was not proved by clearing the suspicion but it shall lead to allow the litigation for partition among the family members and instead that though no prayer was sought for, the parties can be granted the right in the properties to avoid further conflict can be the pragmatic view and

the same can only be an equitable relief.

39. While rejecting the claim of probating the will, that in view of the entitlement of the parties in the suit properties, they can be granted with the relief of partition and though it was claimed there are other properties of the family, but the properties now available are the properties of deceased Jayalakshmi and no other properties are available to deceased Jayalakshmi. Hence question of partial partition does not arise and the entire properties of deceased Jayalakshmi is available on record. Hence, for moulding the relief there is no bar and whether a circumstances is warranted has to be taken into consideration. That though the relief was only to the extent of granting probate, but the entitlement to the parties and the nature of relief that can be granted especially when the right of the parties is not at all disputed by the parties. Before entering into the factum of moulding the relief, let me consider, the judgment of the Hon'ble High Court regarding granting of relief by the civil courts, **Pasupuleti Venkateswarlu vs The Motor & General Traders AIR 1975 SC 1409** had held as follows :

*If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is*

*violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.*

40. The above judgment makes it categorically clear that the court cannot dismiss the suit merely because the plaintiff has not sought for such a relief by supplying the emphasis on the above propositions, as decide the present issue being the residual issue and the **Hon'ble Supreme Court in U.P.State Brassware Corporation Limited and another .vs. Udai Narain Pandey held** as follows:

" Order 7 Rule 7 of C.P.C confers power upon Court to mould relief in a given situation. The provisions of [Code of Civil Procedure](#) are applicable to proceedings under [Industrial Disputes Act. Section 11A](#) of Industrial Disputes Act empowers the Labour Court , Tribunal and National Tribunal to give up appropriate relief in case of discharge of dismissal of workmen." While considering the citation along the facts of this case, it is not applicable.

**Further the Hon'ble High Court in Natarajan.vs. R.Muthukrishnan 2001 (4) CTC 513, which reads as follows:**

"Court can grant lesser relief instead of larger relief.

Court can always grant lesser relief to do substantial justice".

**Further the Hon'ble Supreme Court in Gaiv Dinshaw Irani & Ors vs Tehmtan Irani & Ors 2014 8 SCC 294 have held as follows :**

Furthermore, in [Beg Raj Singh vs. State of Uttar Pradesh & Ors.](#)[18] while deciding on the issue of renewal of a mining lease held that:

“...A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment.” Even this Court while exercising its powers under [Article 136](#) can take note of subsequent events (See: [Bihar State Financial Corporation & Ors. vs. Chemicot India \(P\) Ltd. & Ors.](#)[19], [Parents Association of Students vs. M.A. Khan & Anr.](#) [20], [State of Uttar Pradesh & Ors. vs. Mahindra & Mahindra Ltd.](#)[21] )

35. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice.

By following the above judgment though I am not inclined to accept the prayer of the petitioners for probating the Will and with regard to the nature of the relationship, there was no dispute with regard to the entitlement of the parties and to avoid further litigation, in the words of distorting the claim, by following the judgment of the Hon'ble Supreme Court that by applying rules of fairness, I deem it fit preliminary decree for partition can be granted to the parties by dividing the petition property into 4 equal shares and allotting one share to each petitioners / defendants. In other words, the properties can be divided into four equal shares and the plaintiffs and the defendants are entitled for one of such shares. The point No.3 is answered accordingly.

41. **In fine**, in view of the answers to point No.1 to 3, that the prayer for granting of probate stands dismissed.

However by moulding the relief under Order 7 Rule 7 , preliminary decree for partition is granted by dividing the suit / petition properties into four equal shares and the petitioner / plaintiff and the respondents / defendants are entitled for one share each. No costs.

Dictated to the Steno-typist and transcribed and typed by her, corrected and signed by me in open court this the 3<sup>rd</sup> day of January, 2023.

**Sd/-A.Abdul Kadhar**  
**Principal District Judge,**  
**Pudukkottai.**

**Petitioner/plaintiff side witnesses: -**

P.W.1 – Tmt.Archana  
P.W.2 – Thiru.Manoharan

**Petitioner/plaintiff side documents:-**

Ex.A.1 – Death Certificate of Jayalakshmi – Xerox Copy  
Ex.A.2 – Legal Heirship Certificate of Jayalakshmi - Xerox Copy  
Ex.A.3 – Unregistered Will deed dated 05.02.2017 – Original  
Ex.A.4 – Advocate Notice sent by Petitioner dated 04.08.2017 – Office Copy  
Ex.A.5 – Reply Notice dated 12.09.2017 – Office Copy  
Ex.A.6 – Undelivered Postal Cover – Original  
Ex.A.7 – Sale deed infavour of Jayalakshmi in document No.189/1985 dated  
04.02.1985 – Original

**Respondents/defendants side witness:-**

D.W.1 – Thiru.Manikandan

D.W.2 – Thiru.Vijayakumar

**Respondents/Defendants side documents :-**

Ex.B.1 – Water Tax Receipts in the name of Jayalakshmi – Original

Ex.B.2 – Electricity Bill Receipts in the name of Jayalakshmi – Original

Ex.B.3 - Water Tax Receipts in the name of Jayalakshmi – Original

Ex.B.4 – Death Certificate of Jayalakshmi – Original

Ex.B.5 – Family Card of Manikandan – Original

Ex.B.6 – Family Card of Ramasamy - Original

**Sd/-A.Abdul Kadhar  
Principal District Judge,  
Pudukkottai.**