



**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

APPEAL SUIT NO: 138 OF 2014

Appeal filed under section 96 of CPC against the Judgment and decree dated 28-11-2013 passed in OS No. 5 of 2010 on the file of the Court of the District Judge at Nizamabad.

Between:

1. S.Jaya Laxmi & C.Jaya Laxmi, W/o. Balaji (D/o. S. Danial), Aged about 36 years, Occ Household R/o. H.No. 1-13-17 (1-1-128/23), Vinayaknagar, Nizamabad. (Died per LRs- 2 to 4)
2. Chakinala Balaji S/o. not known to petitioner, Aged Major, Occ. Employee, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.
3. Chakinala Abhishek, S/o. C.Balaji, Aged about 22 years, Occ. Student, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.
4. Chakinala Ashish, S/o. C.Balaji, Aged about 20 years, Occ. Student, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.

...PROPOSED APPELLANT Nos. 2 to 4

Appellant Nos. 2 to 4 are brought on record as LRs of deceased Sole Appellant as per Court Order dated 14.02.2023, vide IA No. 1 of 2021 in AS No. 138 of 2014.

AND

John Dayanand S/o. Late Danial, Aged about 45 years, Occ Teacher, R/o. H.No. 30-265/60/49, Gokul Nagar, A.S.Rao Nagar, Secunderabad.

...RESPONDENT/DEFENDANT

I.A. NO: 1 OF 2014(ASMP. NO: 625 OF 2014)

Petition under Order 39 Rule 1 & 2 R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High



2025:TSHC:22424-DB

Court may be pleased to restrain the respondent herein from alienating the suit schedule properties by way of sale or mortgage.

I.A. NO: 2 OF 2014(ASMP. NO: 626 OF 2014)

Petition under Order 39 Rule 1 & 2 R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to restrain the respondent from interfering with the possession and enjoyment of H.No. 1-13-77(1-1-128/23) vinayaknagar, Nizamabad of the appellant.

**Counsel for the Appellants: Sri K.R. Sasidharan Nair representing
Sri A. Gangadhar**

Counsel for the Respondents: Sri Srikanth Kaveti

The Court delivered the following JUDGMENT:



THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

A.S.No.138 of 2014

JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. K.R. Sasidharan Nair, learned counsel, representing Mr. Annampelli Gangadhar, learned counsel for the appellants / plaintiff, and Mr. Srikanth Kaveti, learned counsel for the respondent / defendant.

2. The instant is an appeal filed by the plaintiff under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 28.11.2013, passed in O.S.No.5 of 2010, by the District Judge at Nizamabad.
3. *Vide* the impugned judgment, the Trial Court partly allowed and decreed the suit insofar as directing the defendant to pay a sum of Rs.2,00,000/- to the plaintiff as per the Will (Ex.B7) and had also decreed the suit insofar as schedule 'E' property in two equal shares, of which, one such share has been ordered to be delivered to the plaintiff. However, the prayer for partition in Schedule 'A', 'B', 'C', 'D', 'F', 'G' & 'H' properties has been dismissed holding that they are not liable to be partitioned.
4. For convenience, the parties hereinafter will be referred to with their rank before the Trial Court.



5. The brief facts necessary for proper adjudication of the instant appeal are that the plaintiff had filed a suit for partition seeking the following reliefs, viz.,

“(a) Partition of suit schedule property in to two equal shares with meters and bounds and for delivery of possession; (b) For recovery of Rs.12,500/- per month from the Defendant towards plaintiff's share out of the profits derived from suit schedule properties, from the date of filing the suit, till the date of realization; (c) To grant a decree for perpetual injunction restraining the Defendant, his men etc., from interfering with the peaceful possession and enjoyment of Plaintiff over the Godown situated in the suit schedule property, till the properties are equally divided; (d) For recovery of costs of suit proceedings and (e) Any other relief.”

6. The following are the suit schedule properties in which the partition was claimed by the plaintiff, viz.,

“Suit Schedule Properties:-

Schedule ‘A’:- House bearing Nos.1-1-128/23, (1-13-77), 1-1-120/23 (New), 1-1-2/1A, situated at Vinayaknagar, Nizamabad.

Schedule ‘B’:- House bearing No.30-265/60/49, situated at Gokul Nagar, A.S. Rao Nagar, Secunderabad.

Schedule ‘C’:- Open plot H.No.32-80/1, admeasuring 240 sq. yards lie in Survey No.228/1, situated at Ramakrishnapuram, Hyderabad.

Schedule ‘D’:- Open plot H.No.32-79/1, admeasuring 200 sq. yards lie in Survey No 228/1, situated at Malkajgiri, R.K. Puram, Secunderabad.

Schedule ‘E’:- Agricultural land in Survey No.1885 and 1888, 18 guntas, situated in Nagaram, Nizamabad.

Schedule ‘F’:- Agricultural land in Survey No.462, admeasuring 0.34 guntas, situated at Thirumalagiri, Suryapet.



Schedule 'G': - Agricultural land in Survey No.196/A-2 (Old), 196/B2 (New), admeasuring Ac.2.00, situated at Thirumalagiri, Suryapet.

Schedule 'H': - Cash of Rs.15,00,000/- (in the custody of Defendant, belongs to Danial and Mary).

Schedule 'I': - (50)Tolas of gold (in the custody of Defendant belongs to Danial and Mary), valued at Rs.8,00,000/-."

7. The plaintiff is the sister of the defendant. Both the plaintiff and defendant are the children / legal heirs of Danial and Mary. The parents of the plaintiff and defendant were Christians by faith and religion. The plaintiff, however, entered into an inter-caste marriage and her marriage was registered with the Registrar of Marriages at Nizamabad on 08.07.1997. Because of the said inter-caste marriage, her family members had certain reluctance and reservation in accepting her in the family any further.

8. According to the plaintiff, the suit schedule properties were purchased by their parents from their hard earned money and the properties were purchased in the name of the father, the mother, and some property in the name of defendant. According to the plaintiff, her mother died on 09.05.2003, so also her father died on 24.07.2009. Thereafter, the legal representatives were brought on record as appellant Nos.2 to 4. According to the plaintiff, after the death of her father, her brother took possession of all the properties and refused to acknowledge her right in the father's property which led to the filing of civil suit. The defendant,



on the other hand, disputed the entire contentions that were raised by the plaintiff seeking for partition in the suit schedule property. It was the outright contention of the defendant that the properties were in fact those which were purchased exclusively by him and, as such, those were all self-acquired properties particularly schedule 'B' & 'C' and half of schedule 'E' property. Further, schedule 'G' property was one which was gifted by his grand-mother to the mother of the plaintiff and the defendant. It was the further contention of the defendant that the plaintiff's marriage was an inter-caste and the said marriage was registered. However, since the said marriage was against the will of her parents, and since her parents underwent tremendous mental agony, the father of the plaintiff subsequently made an endorsement, viz., Ex.B.7, expressing his intention of bequeathing his properties which stood in his name in favour of the defendant and his children, thereby excluding the plaintiff from inheriting any share in the aforesaid properties. After pleadings were complete, the plaintiff led evidence as PW.1 and other two witnesses, viz., PWs.2 and 3. The defendant, on the other hand, examined five witnesses, viz., DWs.1 to 5 including the defendant himself as DW.1. The plaintiff had executed as many as twenty documents viz., Exs.A.1 to A.20. Likewise, the defendant also marked thirteen documents viz., Exs.B.1 to B.13.



9. In the given factual backdrop of the case and the issues that have been framed by the Trial Court and which have been answered, the pertinent question that arise for consideration is “what is the evidence led on either side so as to prove that the properties that are sought to be partitioned were those which belonged to the family of plaintiff and defendant, and that the same were not self-acquired properties of the defendant alone?”.
10. PW.1, in her cross-examination in chief, had deposed that she is in possession of a portion of the schedule ‘A’ property and that the said property stood in the name of her father as recorded in the municipal records. She further stated that except for the portion which she has occupied in the schedule ‘A’ property, the rest of the properties stood let out to the tenants, and it was the defendant who had been collecting the rents derived therefrom, and without sharing the same with the plaintiff who too had an equal share in the property. Further, PW.1 in her cross-examination, stated that she had been receiving rents from the tenants of schedule ‘A’ property from June, 2010 onwards. She further accepted in her cross-examination that after the death of her parents, as a result of a mediation of the elders in the family, she has received 11 tolas of gold from the defendant, though she claims that the said 11 tolas of gold were with herself and that it was kept with her father and that the same was not part of the partition. Further, in her cross-examination, she had also categorically denied



the so-called Will that was executed by her father denying the very handwriting itself and the signatures put on the said Will claiming it to be of her father's. The same averments seem to have been reiterated by PW.2, Mr. G.Narender and PW.3, Mr.A. Srinivas.

11. On the contrary, DW.1-John Dayanand, in his evidence has admitted the fact that the plaintiff is his real sister. He also admitted that certain properties were purchased by his parents. He categorically states that properties shown in schedule 'B' and 'C' and half portion of the property shown in schedule 'E' were those which were purchased by the defendant himself and, as such, these properties became self-acquired property of the defendant and hence the same could not had been claimed in partition by the plaintiff.

12. Likewise, the contention of the defendant was that the property shown in schedule 'G' was gifted by the defendant's grandmother, in favour of defendant's father and who in turn had bequeathed it in favour of the defendant's mother which by itself would go to show that the contention of the plaintiff that all the suit schedule properties were those which were purchased by their parents / father to be incorrect and the plaintiff's contention gets falsified in itself. According to the defendant, while the plaintiff and her husband were residing at Rakasipet, Bodhan between 1997-2000, they had



executed the agreement cum declaration stating that they will not claim any share in the property of the father of the plaintiff and defendant and the copy of such a document executed by the plaintiff was said to be in his possession.

13. The defendant further contended that the plaintiff, in fact, has illegally and forcefully entered into the possession of the schedule 'A' property before filing of the suit and that she had broke open the locks in the portion where she took possession without any knowledge, notice or intimation to the defendant. The defendant further contended that before the death of their father, he had, in fact made a small note in a diary that was kept in the house expressing his intention of giving the suit schedule properties earned by him to the defendant and in the said document the father had expressed his Will of the plaintiff to be given 11 tolas of gold and Rs.2,00,000/- in cash.

14. The defendant in his evidence has also stated that after taking possession of a portion of the suit schedule 'A' property, the plaintiff has in fact also got ousted the earlier tenants from the house at Vinayaknagar, Nizamabad, and in their place new tenants started residing and she started receiving rents. That the plaintiff has meanwhile collected inasmuch as Rs.3,50,000/- towards rent from the said house.



15. In his cross-examination, the defendant has accepted his date of birth to be 30.03.1965 and has also stated that he did his intermediate in the year 1983 and also did his teachers' training in the year 1985. He has also accepted the fact that the date on which Ex.B1 was executed, i.e. on 07.06.1982, he was a minor and that the said property mentioned in Ex.B1 was one which was purchased by the father in the name of the defendant. The defendant had also categorically denied the fact that the property reflected in Ex.B2, dated 30.06.2010, is not which was purchased by his father, but from his own earnings. He has also submitted that he became a Government teacher in the year 1990. He has also denied the fact that schedule 'A' & 'B' properties belongs to his father and that the house that is situated in schedule 'B' property is one constructed by their father.

16. Similarly, identical stand was also taken by the defendant denying the fact that the property which stood in schedule 'A' & 'B' was purchased by his father from one Mr. Kalidas for a sum of Rs.25,000/-. The defendant has admitted the fact that in Ex.B7, the so-called diary notes reflecting as a Will, there are reference of bank deposits and gold mentioned therein. It was further stated by the defendant that half of the schedule 'F' property is his self-acquired property and it was denied of it being totally a joint family property.



17. According to Ex.B9, Ex.B10, Ex.B11 which are part of the same diary bearing notes written by his father and Ex.B11, a Kaul Nama, was scribed on 29.06.2002 by his father.

18. Now when we look into the written statement filed by the defendant, it is pertinent to take note of the first line of defence taken by the defendant, which for ready reference is reproduced hereunder:

"It is true that the parents of the Plaintiff and Defendant purchased properties, but some of the properties shown in the schedule annexed to the plaint are purchased exclusively by the Defendant which are his self acquired properties."

More particularly the properties shown in schedule B and C and half portion of the property shown in Schedule E are purchased by this Defendant which are his exclusive properties.

The properties shown in Schedule G are the properties gifted by the grand mother of the mother of the Plaintiff and Defendant in her favour (in favour of Smt. Mary)."

19. The further stand taken by the defendant also is that the suit schedule 'A' & 'B' properties stand in the name of their father. The relevant portion reflected in paragraph No.4 of the written statement is also reproduced hereunder:

"It is true that the property shown in schedule-A and B (house property situated at Vinayaknagar) is standing in the name of the father of the parties to the suit i.e., Late S.P.Danial in the municipal records."



20. So far as the so-called Will executed by the deceased father of the plaintiff and defendant, the defendant, in paragraph No.9 has made the following averments, viz.,

"It is need to mention here that the father of the Plaintiff and Defendant has written a diary, expressing his intention to give the suit schedule properties earned by him to the Defendant, which is almost in the form of a will wherein he has categorically mentioned that the Plaintiff shall be given 11 tolas of gold and Rs. 2 lakhs each."

21. Subsequent to the aforesaid averments, the defendant had filed yet another additional written statement in a gap of about a month's time from the earlier written statement that was filed by him. There was nothing new that has been brought in this additional written statement as the entire contents of the plaint has already been denied by them in the previous written statement. The only development was the new stand taken by the defendant that as regards parting 11 tolas of gold and Rs.2,00,000/- in cash, 11 tolas of gold was given in the presence of family members and village elders. But so far as the payment of Rs.2,00,000/- in cash is concerned, the defendant is silent in his evidence.

22. Based upon the written statement and the stand taken by the defendant, the defendant entered appearance before the Trial Court and deposed that his parents had purchased properties, of which, some of the properties were purchased in his name and that some properties were purchased by him in his



individual capacity. Therefore, those would become his self-acquired properties.

The relevant portion of the deposition in respect of the same for ready reference is reproduced hereunder:

"I admit that the plaintiff is my sister. I also admit that our parents purchased properties but some of the properties are purchased by me which are my exclusive properties. More particularly the properties shown in schedule B and C and half portion of the property shown in schedule E are purchased by me and the said properties my self acquired, exclusive properties. The properties shown in schedule G are the properties gifted by our grandmother in favour of my father, who in turn bequeathed to my mother.

It is a fact that the schedule-A and B (house property at Vinayaknagar) is standing in the name of my father.

As stated earlier the properties shown in schedule B, and half portion of property in schedule E are my exclusive and individual properties."

23. Further, the defendant also stated that his sister i.e. the plaintiff after performing an inter-caste marriage had executed a document in the form of an agreement cum declaration on 19.06.1997 indicating that she will not claim any of the properties which stands in the name of her father. However, subsequently the plaintiff has illegally and forcefully entered into the suit schedule 'A' property and taken possession of the same. The evidence in this respect again for ready reference is reproduced hereunder:



"the plaintiff and her husband Balaji have executed a document in the form of agreement cum declaration stating that they will not claim any of the properties of late Danial and sent the said document to my parents through a person "

24. It was deposed by the defendant that his father in fact had written a note in a diary intending to give the properties that he had to his son, the defendant and the children of defendant, and that her father in the same diary had also written to pay Rs.2,00,000/- in cash and 11 tolas of gold to the plaintiff in lieu of partition of the properties. The aspect of the so-called Will for ready reference is again reproduced hereunder:

"my father wrote a diary in which he wrote his intention to give the suit schedule properties earned by him to me which is almost in the form of a Will and wherein he has categorically mentioned that the plaintiff shall be given 11 tolas of gold and Rs. 2,00,000/- cash."

25. It is also pertinent to mention here that even the defendant himself in his deposition has stated that what is written in the diary is almost in the form of a Will, which in itself means that it is in fact not a Will. Likewise, in his cross-examination, the defendant has accepted the fact that when Ex.B1 was executed on 07.06.1982 he was a minor. At the same breath, the defendant denies the property reflected in Ex.B2 to be one purchased by his father. At the same breath, he also states that he was not an earning member till 1985 and Ex.B2 is one which was executed on 09.11.1963 when admittedly he do not have any



source of income. The defendant further says that he, in fact, got appointment as a Government teacher in the year 1990 which would only prove that whatever property he could purchase, could have been only from the income he started deriving from 1990 onwards and it could not have been before that. For ready reference, the deposition reflected in his cross-examination is reproduced hereunder:

"As on the date of Ex.B-1 I was minor. My father purchased the property under Ex.B-1 on my name. It is not true to suggest that the property covered in Ex.B-2 is purchased by my father with his earnings. I was not the earning member upto 1985. The witness adds that he worked as medical representative in the year 1985. Since 2009 I am on earned leave. In this year 1990 I joined as government teacher."

26. DW.2, the paternal uncle of the plaintiff and defendant, also does not state anything in respect of the payment of Rs.2,00,000/- to the plaintiff. So also DW.3, yet another paternal uncle of the plaintiff and defendant, accepts of having given 11 tolas of gold to the plaintiff in his presence by the defendant but does not speak of the payment of Rs.2,00,000/-.

27. From the scrutiny of the evidences and the deposition of the witnesses examined during the course of evidence before the Trial Court, it stands established that the plaintiff is the sister of the defendant. It also stands admitted that there were certain properties which admittedly were belonging to the father



of the plaintiff and the defendant. It is also an admitted position that the date of birth of the defendant was 19.03.1965, as such, he would attain the age of majority only in the year 1983. It is also an admitted position that he was pursuing his studies till 1985, when he cleared his teachers' training course. The defendant himself in his cross-examination admitted that till the year 1985 he does not have any source of income which would by itself prove the fact that any property which stood even in the name of the defendant was one which was purchased in the name of the defendant from the income of the deceased father. It is also admitted by the defendant in his cross-examination that he became a Government teacher only in the year 1990.

28. Another aspect which is evident from the pleading and evidences which has come on record is that of the defendant not disclosing before the Trial Court as to which are the properties that he had purchased independently from his own income and what was his source of income at the time of purchase of the so-called suit property.

29. Now coming to the so-called diary note, Ex.B7, which according to the defendant amounts it to be a "Will", the biggest hurdle which is coming in the way of defendant for establishing the said contention is the fact that Ex.B7 does not seem to have been executed or prepared in the presence of any witnesses



and not even in the presence of the defendant, his son. Second thing that which is reflected from Ex.B7, is that, the executant of the Will i.e. the father of the plaintiff and the defendant has not specified the actual details of the property which he intended to give to his son and grandchildren. The only vague reference in that diary note is so far as a house in Nizamabad, two plots in Hyderabad and one in Tirumalgiri etc. etc. with no specific details. Like, for instance, he has one plot in Hyderabad and one in Secunderabad and in the said circumstances, could it be treated as two properties which stand in his name or is there any other property which the plaintiff could not have claimed from her parents out of sheer negligence.

30. DW.2 and DW.3 also have categorically stated that regarding the so-called Will, they came to know about it after the death of her brother i.e. the father of the plaintiff and defendant and not before that. The deposition of DW.3 would go to show that the family members of the defendant as also DW.3, the paternal uncle of the plaintiff and the defendant were annoyed with the plaintiff on account of her performing an inter-caste marriage and that out of their annoyance decided not to allow the plaintiff to come to their house which is sufficient to give an indication that DW.3 so also DW.2 and DW.1 (defendant) were not having cordial and healthy relationship among them only because of the inter-caste marriage that the plaintiff had entered into. Therefore, there



cannot be said to be neutral witnesses unbiased in their thoughts and their relationship.

31. It would be relevant at this juncture to take note of the provisions of Section 63 of the Succession Act, which for ready reference and better understanding is reproduced hereunder:

"63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged.] or a mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his marks to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

32. Section 68 of the Evidence Act which deals with the proof of execution of documents that are required by law to be attested, particularly relevant in



cases of wills, gift deeds or certain types of contracts, is again for ready reference reproduced hereunder:

"If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

33. A three Judge Bench of the Hon'ble Supreme Court in the case of **Shivakumar and Others vs. Sharanabasappa and Others**¹, in paragraph No.11, has laid the guidelines and principles to prove the validity of the Will under unexplained and suspicious acts. The relevant portion of paragraph No.11 for ready reference is reproduced hereunder:

"Will — proof and satisfaction of the Court

11. As noticed, the basic point for determination in this case is as to whether the High Court was justified in taking a view contrary than that of the trial court and in holding that the will propounded by the plaintiffs is not the genuine will of the deceased Sangappa. Determination of this point, obviously, revolves around the legal principles applicable to the making of a testamentary document like will, its proof, and its acceptance by the Court.

¹ (2021) 11 SCC 277



11.1. The will being a rather solemn document that comes into operation after the death of the testator, special provisions are made in the statutes for making of a will and for its proof in a court of law. Section 59 of the Succession Act provides that every person of sound mind, not being a minor, may dispose of his property by will. A will or any portion of a will, the making of which has been caused by fraud or coercion or by any such importunity that has taken away the free agency of the testator, is declared to be void under Section 61 of the Succession Act; and further, Section 62 of the Succession Act enables the maker of a will to make or alter the same at any time when he is competent to dispose of his property by will. Chapter III of Part IV of the Succession Act contains the provisions for execution of unprivileged wills (as distinguished from privileged wills provided for in Chapter IV).

11.3. Elaborate provisions have been made in Chapter VI of the Succession Act, in Sections 74 to 111, for construction of wills which, in their sum and substance, make the intention of legislature clear that any irrelevant misdescription or error is not to operate against the will; and approach has to be to give effect to a will once it is found to have been executed in the sound state of mind by the testator while exercising his own free will. However, when the will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question is accepted as the last will of the testator.

11.5. The learned counsel for the appellant has referred to the decision in H. Venkatachala Iyengar [H. Venkatachala Iyengar v. B.N. Thimmajamma. AIR 1959 SC 443]. It is noticed that in paras 18 to 22 of the said decision, this Court has synthesised and condensed almost the entire panorama relating with execution and proof of a will and the guiding principles for a court while examining the document which is propounded as a will. These passages in the said three-Judge Bench decision of this Court could be usefully reproduced as under : (AIR pp. 451-52, paras 18-22)



"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus, the question



as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the 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.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such



circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills, but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasises that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances



*surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* [*Harmes v. Hinkson*, 1946 SCC OnLine PC 20 : (1945-46) 50 CWN 895], 'where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth.' It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect."*

(emphasis supplied)

*11.6. The learned counsel for the appellant has referred to paras 7 and 8 of the decision of this Court in *Indu Bala Bose* [*Indu Bala Bose v. Manindra Chandra Bose*, (1982) 1 SCC 20] which may also be taken note of as under : (SCC pp. 22-23)*

"7. This Court has held that the mode of proving a will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a will by Section 63 of the Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator



as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes a prominent part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. [See Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529; H. Venkatachala Iyengar v B.N. Thimmajamma, AIR 1959 SC 443 : 1959 Supp (1) SCR 426 : 1959 SCJ 507; Purnima Debi v. Khagendra Narayan Deb, AIR 1962 SC 567 : (1962) 3 SCR 195 : (1962) 1 SCJ 725]

8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person "



(emphasis in original and supplied)

34. The Hon'ble Supreme Court further in the case of **Meena Pradhan and Others vs. Kamla Pradhan and Another**², in paragraph Nos.9 to 11, held as under:

"9. A will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

² (2023) 9 SCC 734



10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with.



10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.



11. In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances."

35. In view of the judgments cited above and the guidelines laid down by the Hon'ble Supreme Court, when we look at the contents of the diary note, the manner it is written without there being an attestation and there being no witnesses who have deposed of having seen the father of the plaintiff and defendant writing the said Will, and there being no specific details of the so-called properties which is reflected in the pages of the diary, it is difficult to accept the same as a properly executed Will by the deceased Danial, the father of the plaintiff and defendant.

36. Another aspect which needs to be considered is that the defendant and the witnesses examined by the defendant have all taken a consistent view of the entire family of the defendant being annoyed with the plaintiff on account of her performing an inter-caste marriage and the vengeance for the same is still carried by the defendant and it appears that he wants to deny her rightful claim only on account of that reason. In the evidence, the defendant so also the paternal uncles of the plaintiff and defendant have accepted the fact that from the time the plaintiff entered into an inter-caste marriage, the parents of the



plaintiff and defendant were under agony and under mental pressure. At all places, the defendant and his witnesses have also said that the parents died because of the mental health condition that arose because of the plaintiff's inter-caste marriage.

37. These averments of the defendant would also go to show that the parents, particularly the father definitely was not keeping good health from the time of the plaintiff having performed inter-caste marriage and was under mental stress and agony and was also depressed as pleaded by the defendant himself, leading to doubt the contents of the diary and the intention, motive and the reason for writing the same. Only for the reason of a daughter from the family belonging to Christian faith and religion marrying outside the religion (inter-caste marriage) should not and cannot be a ground for denying the daughter of her rightful claim in her parents' property.

38. So far as the claim of the plaintiff as regards schedule 'H' & 'I', she has not been able to show any cogent evidence to substantiate her claim insofar as the cash of Rs.15,00,000/- left by the plaintiff and defendant, and there being 50 tolas of gold in custody of the defendant. In the absence of which, the plaintiff's claim for partition in schedule 'H' & 'I' fails and the same is accordingly rejected. However, the plaintiff shall be entitled for an equal share in the



remaining immovable property along with the defendant so far as the properties that are reflected in schedule A', 'B', 'C', 'D', 'E', 'F' & 'G' is concerned.

39. The instant appeal to the aforesaid extent stands allowed and the impugned judgment and decree dated 28.11.2013, in O.S.No.5 of 2010, passed by the District Judge at Nizamabad, stands set aside / quashed. The Registry is directed to draw a decree in accordance with the order passed above holding that the plaintiff shall be entitled for half share in the schedule A', 'B', 'C', 'D', 'E', 'F' & 'G' and not entitled for any relief so far as schedule 'H' & 'I' properties are concerned.

40. As a sequel, miscellaneous petitions pending if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The District Judge at Nizamabad.(with records, if any)
2. One CC to Sri A.Gangadhar, Advocate [OPUC]
3. One CC to Sri Srikanth Kaveti, Advocate [OPUC]
4. Two CD Copies

VH/PSL



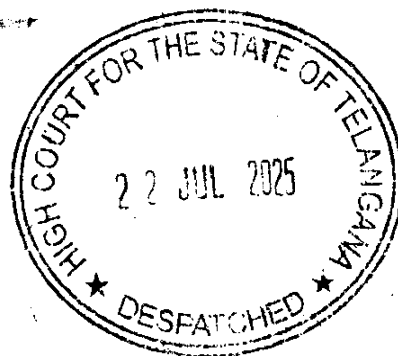
2025:TSHC:22424-DB



2025:TSHC:22424-DB

HIGH COURT

DATED: 11/07/2025



JUDGMENT+DECREE

AS.No.138 of 2014

**ALLOWING THE
APPEAL SUIT**

6
REMA
DOBB/oss



**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

APPEAL SUIT NO: 138 OF 2014

Between:

1. S.Jaya Laxmi @ C.Jaya Laxmi, W/o. Balaji (D/o. S. Danial), Aged about 36 years, Occ Household R/o. H.No. 1-13-17 (1-1-128/23), Vinayaknagar, Nizamabad. (Died per LRs- 2 to 4)
2. Chakinala Balaji S/o. not known to petitioner, Aged Major, Occ. Employee, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.
3. Chakinala Abhishek, S/o. C.Balaji, Aged about 22 years, Occ. Student, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.
4. Chakinala Ashish, S/o. C.Balaji, Aged about 20 years, Occ. Student, R/o. H.No.1-1-94/3 (1-1-8/A/1 Old), Vinayakanagar, Nizamabad.

...PROPOSED APPELLANT Nos. 2 to 4

Appellant Nos. 2 to 4 are brought on record as LRs of deceased Sole Appellant as per Court Order dated 14.02.2023, vide IA No. 1 of 2021 in AS No. 138 of 2014.

AND

John Dayanand S/o. Late Danial, Aged about 45 years, Occ Teacher, R/o. H.No. 30-265/60/49, Gokul Nagar, A.S.Rao Nagar, Secunderabad.

...RESPONDENT/DEFENDANT

Appeal filed under section 96 of CPC against the Judgment and decree dated 28-11-2013 passed in OS No. 5 of 2010 on the file of the Court of the District Judge at Nizamabad.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Court below and the material papers in the MVOP and upon hearing the arguments of Sri K.R. Sasidharan Nair representing Sri A.



2025:TSHC:22424-DB

Gangadhar, Advocate for the appellants and of Sri Srikanth Kaveti, Advocate for the Respondents.

This Court doth Order and Decree as follows:

1. That the Appeal Suit be and hereby is allowed and the impugned judgment and decree dated 28.11.2013 in O.S.No. 5 of 2010, passed by the District Judge at Nizamabad, stands set aside/quashed;
2. That the plaintiff shall be entitled for half share in the schedule of properties 'A', 'B', 'C', 'D', 'E', 'F' & 'G';
3. That the plaintiff be and hereby is not entitled for any relief so far as schedule 'H' & 'I' properties; and
4. That there shall be no order as to costs in this appeal.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The District Judge at Nizamabad.
2. Two CD Copies

VH/PSL





2025:TSHC:22424-DB

HIGH COURT

DATED: 11/07/2025

DECREE

AS.No.138 of 2014

**ALLOWING THE
APPEAL SUIT**

3
~~REMA~~
~~DADPORS~~