(2001) 12 AP CK 0026

Andhra Pradesh High Court

Case No: C.C.C.A. No"s. 50 and 84 of 1997 and Crp. 940 of 2000

Arun Kumar Sharma		APPELLANT
	Vs	
Mrs. Asha Sharma and Others		RESPONDENT

Date of Decision: Dec. 10, 2001

Citation: (2002) 1 AnWR 737 : (2001) 3 APLJ 497

Hon'ble Judges: L. Narasimha Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Vilas Afzalpurkar and Fazal Yousufuddin and Anasuya, in the C.R.P, for the Appellant; C. Poornaiah and Ors., for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.
The two appeals arise out of common judgment of the Court of the II Additional Judge, City Civil Courts, Hyderabad, in O.S.Nos.355 and 581 of 1993. The Civil Revision Petition arises out of order passed by that Court in IA.No.401/97 in OS.No.581/93. The appellants in both the appeals are the plaintiffs in O.S.No.355 and defendants in OS.No.581 of 1993. They are also respondents in IA.No.401/97. For the sake of convenience, the appellants are referred to as the plaintiffs and the respondents as defendants.

2. One Dr. Ayendra Sharma and his wife Smt. Nirmala Devi Sharma had two sons and three daughters. The 1st plaintiff Mr. Arun Kumar Sharma and the 2nd defendant Mr. Uday Kumar Sharma are their sons. The 1st defendant Mrs. Asha Sharma, the 3rd defendant Mrs. Rekha Amarnath and the 4th defendant Mrs. Maya Badrinath are their daughters. Smt. Nirmala Devi owned and possessed Immovable properties viz., one big house and one small house over an area of 934.44 sq. yards at Domalguda and a plot of 1153 sq.mts. at Banjara Hills. Dr. Ayendra Sharma appears to have died long back whereas Smt.Nirmala Devi died in April, 1989.

3. The 1st plaintiff filed OS.No.355/93 against the defendants for partition as well as mandatory injunction. It was his plea that his mother Smt.Nirmala Devi owned and possessed the three items of Immovable properties referred to above, that initially she executed a Will on 12-11-1988 whereunder she bequeathed the said three items of properties in equal shares to her five children, i.e., two sons and three daughters, and that thereafter in supersession of this Will, she executed another Will and last testament on 29-3-1989 bequeathing the bigger house to him, the smaller one to his brother i.e., the 2nd defendant and the landed property at Banjara Hills in equal shares to the sons and daughters. According to him, the Will dated 29-3-1989 contained a clause whereunder in case any one of the legatees intend to sell their share in the plot in Banjara Hills, the other legatee will have a right of pre-emption. The plaintiff pleaded that the defendants were planning to sell their share of the property in favour of one Mr.Sangameshwar Reddy. On these pleadings, he sought for a preliminary decree of partition of the plot at Banjara Hills into five equal shares, allot one such share to him and a mandatory injunction requiring the defendants to execute the sale deed in respect of their respective shares in favour of the plaintiff on receiving the consideration.

4. The defendants resisted the suit. They pleaded that late Nirmala Devi executed her last Will on 12-11-1988, she died on 2-4-1989 and the partition and allocation of the properties should be as contemplated under the Will dated 12-11-1988. They contended that the Will dated 29-3-1989 propounded by the plaintiff is concocted one and is unenforceable in law.

5. The defendants, in their turn, filed OS.No.581/93 for partition of the suit schedule properties in accordance with the Will dated 12-11-1988. In defense to this suit, the plaintiff had almost repeated his contentions in the plaint in OS.No.355/93. In substance, the contents of the plaint in OS.No.355/93 are the same as those in the written statement in OS.No.581/83 and vice versa.

6. The trial Court framed the following issues in both the suits:-

Issues in OS.No.355/93:--

"1. Whether the suit Will dated 29-3-1989 is true, valid and binding on the parties?

2. Whether the suit is bad for non-joinder of Ms. Jyoti as a party to the suit?

3. Whether the suit is properly valued, and Court fee paid is correct?

4. Whether the plaintiff is entitled to the partition to the schedule property as prayed for, and allotment of his share as prayed for?

5. Whether the plaintiff is entitled to the mandatory injunction against the defendants as prayed for?

6. To what relief?

7. Issues in OS.No.581/93:-

"1.Whether the Will dated 29-3-1089 propounded by the defendant is genuine, and whether it is the last testament of Nirmala Devi Sharma, who is the mother of the parties?

2. If so, whether the plaintiffs are entitled to the partition of plaint Item No.1 of schedule as prayed for?

3. Whether the defendant is entitled to a right of pre-emption in respect of item No.2 of plaint schedule?

4. Whether the particulars of plaint "B" schedule and valuation thereof are correct?

5. Whether the plaintiffs are entitled to partition and separate possession of Item No.2 of "A" and "B" schedule properties?

6. Whether the plaintiffs are entitled to mesne profits in respect of their share in relation to the plaint Item No.1 of "A" schedule?

7. To what relief?"

8. Having regard to the inter-dependence of the suits as well as the similarity of the issues, the trial Court had undertaken a common trial of both the suits. On behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A1 to A8 were marked. On behalf of the defendants, DW1 was examined and Exs.B1 to B6 were marked. During the pendency of the suit, the 2nd defendant died. His legal representatives, defendants 5 to 7 were brought on record. The 1st plaintiff died during the pendency of the appeal. Therefore, his wife Ms. Neena Rajesh Sharma and daughter Ms. Arpita Ganesh were brought on record.

9. The trial Court, through its common judgment dated 29-1-1997, dismissed OS. No. 355/93 and passed a preliminary decree in O.S.No.581/93. An Advocate Commissioner was appointed to ascertain the shares and mesne profits. The defendants appear to have submitted certain objections to the report submitted by the Commissioner. The trial Court passed an order in IA.No.401/97 accepting the report of the Commissioner through its order dated 4-9-1999. The plaintiffs filed CCCA.No.50/97 against the judgment and decree of the trial Court in OS.No.581/93 and CCCA.No.84/97 is filed by the plaintiffs against the dismissal of their suit in OS.No.355/93. C.R.P.No.940/2000 is filed by the defendants against the order of the trial Court in IA.No.401/97 alleging that certain objections raised by them to the report of the Commissioner were not properly considered by the trial Court .

10. Sri Vilas Afzalpurkar, the learned counsel for the plaintiffs submits that the plaintiffs have proved execution of the Will dated 29-3-1989 (hereinafter referred to as "the 2nd

Will'' for the sake of convenience) as required under law and the findings of the trial Court on the same cannot be sustained. He further submits that there were no suspicious circumstances surrounding the execution of the 2nd Will and, as such, ought to have been given full effect to it.

11. On the other, Smt. Anasuya, the learned counsel for the defendants submits that the 2nd Will was brought into existence by the 1st plaintiff for his selfish ends, that its very existence was shrouded in mystery and the findings of the trial Court on this issue do not call for any interference at all. According to her, once the 2nd Will is not believed, the properties have to be distributed as contemplated under the 1st Will dated 12-11-1988. She further submitted that the acceptance of the report of the Advocate Commissioner without reference to the objections raised by the defendants is not proper and the exercise has to be undertaken afresh.

12. The learned counsel for the plaintiffs and the defendants have argued the matter extensively, both on facts as well as on the question of law. They have cited various decisions of the Hon''ble Supreme Court as well as the High Courts in support of their respective contentions. The result of the suits as well as the appeals depends upon the finding as to the validity or otherwise of the 2nd Will. If the 2nd Will is found to be valid, the contention of the plaintiffs has to be accepted and if it is found to be invalid, the properties have to be partitioned in accordance with the 1st Will.

13. Therefore, the point that falls for consideration in these two appeals is:

Whether the Will executed by Smt. Nirmala Devi Sharma on 29-3-1989 is legal, valid and enforceable in law.

14. Before undertaking the discussion of the matter with reference to the pleadings and evidence, it is to be noticed that the nature of proof required in case of a Will substantially differs from the one required in case of ordinary documents. The execution of any document can be proved in accordance with the evidence as contemplated under Sections 45, 47, 67 and 68 of the Indian Evidence Act. Inasmuch as the Will operates only after the death of the executor, the propounder of the Will has to discharge his burden, which is relatively heavier. Therefore, in addition to the steps contemplated under the Evidence Act, the propounder has also to examine the attesters as required under Sections of 59 and 63 of the Indian Succession Act. The Hon''ble Supreme Court laid down the principles in this regard in its successive decisions in H.VENKATACHALA IYENGER vs. B.N.THIMMAJUMMA (1); SHASHI KUMAR BANERJEE VS. SUBODH KUMAR BANERJEE (2); SURENDRA PAL vs. DR.(MRS.) SARASWATI ARORA (3); BRIJ LMOHAN LAL ARORA vs. GIRDHARI LAL MANOCHA (4); SMT.INDU BALABOSE vs. MANINDRA CHANDRA BOSE (5), to mention a few. In addition to the proof of execution of the document i.e., the Will, the propounder has also to remove and explain any suspicious circumstances that may have been either pleaded by the parties opposing him or that may be genuinely entertained by the Court itself. Thus, the proof of a Will

involves two phases, viz., (a) proving the execution of the document i.e., by filing the document itself and examining the attesters; and (b) removal of suspicious circumstances. In a way, while the former involves a positive approach by way of filing the document, examining the witnesses, etc, the latter involves a negative approach in the sense that the propounder should establish that there did not exist any suspicious circumstances at the execution and existence of the Will. Similarly, while in the case of former, the extent of proof can almost be standardized, such as, by producing and marking the document itself and examining the attesters; if necessary getting the signature of the testator compared with the other admitted signatures, etc., in the case of the latter, the standard of proof depends on number of variables, such as, the type of objections raised, the circumstances under which the Will came to be executed, the proximity or otherwise of the propounder or those who oppose the Will to the testator. This substantially differs and radically varies from case to case depending on the facts and circumstances.

15. In the instant case, it is not in dispute that the testator is the mother of the original plaintiff and defendants and either under the 1st Will or the 2nd Will the beneficiaries are her children. The 1st Will was executed on 12-11-1988 whereunder all the three items of properties were distributed equally among the children. It is the specific case of the plaintiffs that after the execution of the 1st Will, late Nirmala Devi went to Delhi and Agra, she came back to Hyderabad in the last week of March, 1989 and on 29-3-1989 she executed the 2nd Will. She died on 2-4-1989. It was pleaded by the plaintiff that he came to know about this will only when he received the letter dated 28-10-1992 (Ex.A1) from one Mr. R.K. Sanghi, Advocate, addressed to late Nirmala Devi. Ex.A1 reads as under:

"This is to inform you that my father Shri G.P. Sanghi, Advocate, expired on 20-5-1991.I do not know if you are aware of this fateful event.

Anyway, while sorting out the old files and papers on the occasion of Deepavali, I found a "Will" executed by you on 29-3-1989 and left in office for the reasons best known to you.

You may pleased let me know what has to be done with the same or you may please call at my office and collect the same, settling the amount if any."

16. The 1st plaintiff as PW.1 stated in his evidence that after the letter was received by them, he approached the said Advocate Mr. R.K. Sanghi and the Will (Ex.A3) was given to him and thereafter he has shown the same to his brother and sisters i.e., the defendants. He filed Ex.A3 in the Court. Ex.A3 was attested by two persons, viz., Dr. Padma Kumar and One Sri Tulja Prasad. The plaintiff examined Dr.Padma Kumar as PW.2 and Tulja Prasad as PW. 3. The signature on Ex.A3 was not seriously disputed, much less, the defendants had taken any steps to get it compared by a hand writing expert. Even to a naked eye the signature on Ex.A3 tallies with the one on the 1st Will i.e., Ex.B1. With these steps, it can be safely presumed that the plaintiff had proved the Will as required under the provisions of the Indian Evidence Act and the Indian

Succession Act.

17. Then comes the question of the plaintiff discharging his burden of removing and explaining the suspicious circumstances. The defendants broadly pleaded the following suspicious circumstances, which according to them, would have a bearing on the validity and genuinity of the Will:

(a) Health of Smt. Nirmala Devi Sharma, after she came from Delhi, was not good;

(b) No love was lost between Nirmala Devi and PW.1 even while Ex.B1 was executed.

(c) PW.2, who is the attester in both the Wills failed to inform the factum of the 2nd Will till Ex.A1 was received;

(d) The conduct of the advocate who addressed Ex.A1 was suspicious since he informed the same several years after the death of the testator as well as the father of the said Advocate;

(e) The 2nd Will was executed within three months from the date of the 1st Will;

(f) There was no indication in Ex.A3 that it was dictated by the Advocate Mr.Sanghi nor there is signature of the scribe;

(g) PW.2 put the date under the signature as attester only in Ex.A3 and not in Ex.B1;

(h) PW.1 did not mention about Ex.A3 in the representation made by him to the ULC authorities under Ex.B4; and

(i) No explanation is called for as to the delay in sending the letter under Ex.A1 by the Advocate.

19. Therefore, it has to be seen as to how far PW.1 was successful in removing and explaining these suspicious circumstances.

20. Before undertaking discussion on these aspects, it may be noted that Law of Succession operates objectively whereas devolution under the testaments depends solely on the discretion of the testator. Law keeps the discretion of the testator intact till his last breath. The necessity to execute a Will would arise only when the testator wants the properties held by him to be passed on otherwise than in accordance with the relevant Law of Succession. He would execute it when his age advances or when his health starts deteriorating.

21. Whenever a testator makes a Will and permits the contents of the same known to his successors and other legatees, it is not uncommon that some feel rejoiced and others feel dejected. It would, in fact bring about and redefine the relationship between the testator on one hand, and his kin and relations who were provided, or as the case may

be, denied the benefits under the Will, on the other hand. This may happen even among the relations and kin of the testator. Even among those who are provided with the bequest, some may turn out to be gratuitous, while others, feeling assured of what is meant for them under the Will, may turn to be in different towards the testator. If the testator happens to live for some time after the execution of the Will, as and when events start unfolding and attitudes start manifesting, the testator may sometimes reconsider the arrangement ordained by him earlier and may execute a new Will, which would naturally nullify the one executed by him earlier. In doing so as before, he owes no explanation or answer to any one. It is too difficult to imagine or discern as to what prompted the testator either in ordering a particular method of distribution of the properties, or in refusing it latter.

22. The evidence of P. Ws. 1 to 3 and DW.1 may be examined with this background. Other than P.W.1 and DW.1, who are the plaintiff and the 1st defendant respectively, the witnesses who were not parties to the litigation are P.Ws.2 and 3. PW.2 is a Doctor by profession and his association with the family of Nirmala Devi was from 1983. It is an undisputed fact that he figured as an attesting witness in Ex.B1. It is also evident that PW. 1, the eldest son was not leading a happy life and became addicted. The relationship of PW.2 with the family of Nirmala Devi was more than that of an ordinary tenant. It also needs to be seen that when Nirmala Devi returned from Delhi on 26-3-1989, it was PW.2 and no other family member that had received her at the station. It was he who attended upon her while she fell slight discomfort for 2 or 3 days after her arrival. In the cross examination, PW.2 stated that even on 2-4-1989 on which date she died, it was he who had taken Nirmala Devi to the Gagan Mahal Nursing Home, situated nearby the house. The plaintiff and defendants were not even certain in their pleadings about the date of her arrival. All of them stated it to be 28-3-1989. It was only PW.2 who gave correct date of her arrival i.e., 26-3-1989. PW.2, notwithstanding his proximity to the family and services rendered by him, did not figure as beneficiary either in the 1st Will or in the 2nd Will. In addition to taking care of Nirmala Devi, PW.2 was looking after PW.1 also since the latter was addicted and suffered a lot in life. It was not elicited any where in the evidence that the relationship of PW.2 with other members of the family i.e., defendants was in any way different or that he was inimical towards any one. Under these circumstances, there is no necessity or occasion to view the testimony of PW.2 with any suspicion. On the other hand, it deserves to be given due credit.

23. The trial Court suspected the credit worthiness of PW.2 on the ground that he did not bring the factum of the execution of the 2nd Will to the notice of any of the family members till the letter under Ex.A1 was received. In this regard, it is to be noticed that the very fact that Nirmala Devi had chosen to execute the 2nd Will suggests that she was not happy with the earlier dispositions, either on account of any reactions from any one or some of the legatees, or the nature of treatment she may have received subsequent to the execution of the 1st Will, more so, when she was at Delhi and Agra and after her return to Hyderabad. It is too difficult to discern as to what prompted her to execute the

2nd Will. At the time of execution of the 1st Will, she had taken her sons and daughters along with her to the office of the Advocate and the contents of the said Will made known to all. It may be that she wanted to change that Will and keep it as a secret, lest any unpleasant situations and reactions may erupt on account of the changed dispositions. As far as PW.2 is concerned, the reason for his not informing the plaintiff and the defendants about the 2nd Will appears to be that he was not aware of its contents and that there was no occasion for him to do so. In his cross-examination, he categorically said that "there is no occasion for me to inform to her (Nirmala Devi"s) children about the execution of Ex.A3."

24. Nothing was elicited from the witnesses that the health of Nirmala Devi on 29-3-1989 was so weak that she was not in a position or capacity to execute a Will. PW.2 was consistent in his deposition and graphically described as to how Nirmala Devi executed Ex.A3 and how he attested it. The mere fact that he had chosen to put the date under his signature in only one of the two Wills does not in any way discredit his trust worthiness.

25. As far as PW.3 is concerned, the defendants could not elicit or establish any thing, which could dilute the veracity of his evidence.

26. The defendants pleaded that on account of misunderstandings between the wife of PW.1 and Nirmala Devi, PW.1 had to live separately and under these circumstances, it was difficult to expect Nirmala Devi to confer any additional benefits on PW.1. PW.1 in his cross examination stated that on account of certain communication gap between his wife and mother, he stayed separately for few months, but thereafter returned back to the parents house to take care of the parents. DW.1 was the only witness to depose on behalf of the defendants. It is worthwhile to refer to some of his statements.

"My father purchased the land at Domalguda in the name of my mother and built a house thereon. I am not aware if my father has executed any Will during his life time. Except for the period the plaintiff lived abroad or during the period the plaintiff lived at Gandhinagar, my parents used to live at Domalguda house along with the plaintiff and his family. I mean they were just living in the same house, but were not living together. There was a common mess and my bhabhi used to cook. My mother used to manage the house meeting the house-hold expenses. She was meeting the expenses whenever we all were there. I do not know as to who was looking after the household affairs after my father"s death, as I was not staying there".

" I know Dr. Padma Kumar (DW.2). Dr. Padma Kumar was staying and was associated with the house at Domalguda even since prior to the death of my father, as suggested. I am not aware of Dr. Padma Kumar attended on my father during his illness. I am not aware if he also attended on my mother and treated her medically. I cannot deny the suggestion that Dr. Padma Kumar attended on her and treated her, as I was not there and I am not aware of it. "

27. The reason for his not accepting the Will under Ex.A3 is stated by him as under:--

"By no chance my mother could have executed the subsequent alleged Will deed dated 29-3-1989, as she never consulted me or spoke to me about it. I was sent a copy of the earlier Will deed dated 12-11-1988, containing the signature of my mother and attesting witnesses thereon. My mother did not send a copy of the subsequent Will to me in the similar manner as it was done in the case of the earlier Will.

28. This can hardly constitute a valid reason to disbelieve a Will, the execution of which is otherwise proved. It should not be forgotten that all through DW.1 was residing elsewhere and the testatrix was living with PW.1 and his family through out. There was even a suggestion to DW.1 to the effect that he never invited his parents to stay with him and that they never stayed with him.

29. One of the contentions of the defendants was that the fact that the Advocate addressed Ex.A1 after several years after the death of the testator brings about any amount of suspicion. It has to be noticed that Ex.A1 itself clearly states that the Advocate who addressed the letter came across the Will while he was checking and rearranging the papers of his father after the death of the latter. He was not aware that the testator was no more alive and that is the reason why he addressed the letter to Nirmala Devi herself. If the conduct of the Advocate was to be doubted, the best course for the defendants would have been to get him summoned and examined him. They have not chosen to do so. When Ex.A1 speaks for itself and answers many circumstances, it cannot be said that the plaintiff failed to remove and explain any suspicion in this context.

30. The execution of the 2nd Will within three months from the date of the 1st Will, if considered in the attending factual circumstances, may not create any suspicion. After execution of the 1st Will, Nirmala Devi went to her 2nd son (D-2) at Delhi and daughter at Agra. PW.1 made no secret of his attachment and sentiment to the residential house. The 2nd defendant had purchased a flat at Delhi for himself. It is not uncommon in the Indian families, particularly in the Hindu families, where female members are not given any share in the family residential houses. Even in the A.P. Amendment to the Hindu Succession Act, though it provided for equal share to the daughters in the coparcenery properties, the residential houses were kept out of the reach of female members. The operation of the 1st Will would have resulted in disintegration of the family houses and further the three daughters were very much settled at different places. In her 2nd Will, the only change made by her was to the effect to make the two houses available to the sons and the disposition as regards the property at Banjara Hills remained unchanged. Three months was fairly a long period for the testatrix to assess the reactions and imagine the outcome of the dispositions made by her in the 1st Will.

31. It is evident from a reading of Ex.B1 that Nirmala Devi was of the view that all her three daughters are married in a well to do families. The 2nd defendant was having his own flat at Delhi and was settled. It was the plaintiff who did not have any property of his

own and not only suffered in life but was addicted to drinks. This is evident from the deposition of DW.1, when he stated as under:

"It is a fact that my brother, the plaintiff, was addicted to alcohol. He was addicted to drinks much prior to the death of my parents. I cannot say if the plaintiff could not run or manage the house, being addicted to alcohol, as I did not stay with him for long periods. I cannot comment on the suggestion that since the plaintiff was addicted to drinks, the plaintiff"s wife and my mother used to manage the house together. I came to know that the plaintiff, after a serious illness said to have suffered by him, stopped drinking."

32. The distribution of the properties in equal shares in this set up would naturally have resulted in injustice to the plaintiff. If at all anything, the testatrix had only corrected this imbalance by executing her 2nd Will. Therefore, it cannot be said that execution of the 2nd Will by Nirmala Devi within three months from the date of the 1st Will by itself is a suspicious circumstance.

33. There is another aspect of the matter. After she had executed the 1st Will, Nirmala Devi travelled to Delhi and Agra and she was in a better position to assess the relative conditions of living of her children. There appears to be grouping of the defendants together against the plaintiff after the execution of the 1st Will in view of creation of equal shares in the Banjara Hill property. All the defendants started negotiations with the daughter of one Sangameshwar Reddy for selling their shares even when the plaintiff was requesting and imploring upon them to sell their shares to him. It appears that he has also proposed that they may take his share in the Banjara Hills property and permit him to have the house. Even this was not acceded to. The following deposition of DW.1 in this regard exemplifies their opposition to PW.1 purchasing their share in the Banjara Hills property, which he was entitled to as a right under the Will:

"We have an objection to sell our shares in Banjara Hills property to the plaintiff, as we never choose him for the same and as he never came forward with any concrete proposals for the purchase."

34. The letter under Ex.B5 belies the contention of DW.1 that the plaintiff did not come forward with a concrete proposal. When PW.1 was not in a position to persuade his brother and sisters to sell their shares to him, he ultimately approached Mr. Sangameshwar Reddy with the following proposal:

"However, I am ready to pay you all amounts assessing the value or the amount you have agreed for with the proposed buyer and take over the possession as an absolute owner. You will have to sign a Relinquishing Deed only and get the same registered (Ex.B5)."

35. While these are the manifestations of the attitudes of the defendants, it will not be too difficult for a mother to assess the intentions of her children. Therefore, there is nothing unnatural about the testatrix to correct the imbalance resulting out of the previous Will.

36. Ex.B4 is a representation submitted by the plaintiff to the ULC authorities for grant of exemption in respect of the Banjara Hills property. It was sought to be commented by the defendants that when Ex.B4 was addressed on 23-11-1992, the plaintiff did not make any reference to Ex.A3 in this representation and, therefore, it has to be inferred that Ex.A3 was brought into existence only after 23-11-1992. It is to be noted that Ex.B4 was a representation to the ULC authorities for grant of exemption. The plaintiff did not base his claim or that of other family members on any Will or Deed. There is no reference to Ex.B1also. Therefore, non mention of Ex.A3 in Ex.B4 would not make the things different in any way and it does not give rise to any suspicion touching upon the validity of Ex.A3.

37. The learned counsel for the appellant as well as the respondents have cited various decisions in support of their contentions. All of them related to the principles of interpretation of Wills and those governing the proof of a Will. We have already referred to the principles enunciated by the Hon''ble Supreme Court and other High Courts and reference to them would only be a repetition.

38. From the above discussion, it emerges that the Will dated 29-3-1989 under Ex.A3 was not only proved as required under law, but the plaintiff had successfully cleared, removed and explained the suspicious circumstances around it. We accordingly hold that the Will under Ex.A3 has been properly executed by late Nirmala Devi Sharma and the properties left by her have to be distributed in accordance with the depositions made in Ex.A3. The judgment and decree of the trial Court in OS.Nos.355 and 581 of 1993 are hereby set aside. OS.No.355/93 shall stand decreed and OS.No.581/93 shall stand decreed to the extent of the property in Banjara Hills. In other aspects, it stands dismissed.

39. Since IA. No. 401/97 was filed on the strength of the decree in OS. No. 581/93, Civil Revision Petition No.940 of 2000 becomes infructuous inasmuch as the order in the IA stands set aside along with the decree in OS.No.581/93.

40. In the result, both the appeals stand allowed as indicated above. Having regard to the relationship of the parties, we direct that the parties shall bear their costs.