(2004) 01 AP CK 0009

Andhra Pradesh High Court

Case No: Second Appeal No. 429 of 1996

D. Padmanabha Reddy (Died) Per L.Rs.		APPELLANT
	Vs	
Smt. G. Anasuya and Others		RESPONDENT

Date of Decision: Jan. 5, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 2, 115
- Evidence Act, 1872 - Section 45, 47, 67, 68
- Succession Act, 1925 - Section 59, 63

Citation: (2004) 2 ALT 418

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: C.V. Nagarjuna Reddy, for the Appellant; P.V. Vidyasagar, for the Respondent

Final Decision: Allowed

Judgement

B.S.A. Swamy, J.

The defendant in O.S.No. 207 of 1978 on the file of Principal Subordinate Judge, Tirupathi is the appellant herein. Aggrieved by the judgment and decree of the District Judge, Chittoor in A.S.No. 163 of 1991, dated 13-2-1996 decreeing the suit filed by the respondent herein for partition of the properties and allotting 1/6th share to the respondent by reversing the judgment of the Trial Court dismissing the suit, this second appeal has been preferred.

2. G. Anasuya, the plaintiff, G. Padmanabha Reddy, the defendant No. 1 and Savithramma-defendant No. 3 are the children of one late Narasimha Reddy who is the husband of second defendant-Rajamma. That Narsimha Reddy died intestate seven years before filing of the suit i.e. in the year 1970. Thereafter, plaintiff got issued a legal notice-Ex.A-1 on 28-10-1977 claiming partition of the family properties and allotment of 1/8th share to her and that the defendant No. 1 sent a reply

notice-Ex.A-3 dated 10-11 -1977 stating that the properties were bequeathed by his late father Narsimha Reddy by executing an unregistered Will. Hence, she is not entitled for any share in the property. The plaintiff initially tiled the suit for partition of the family properties by metes and bounds and to allot 1/8th share to her in the properties of their father Narsimha Reddy by contending that their late father never executed any will and it was brought into existence by the defendant since the testator signed in the will as Narsimha Reddy, whereas he always used to sign as Narsa Reddy. Defendant No. 1 as well as defendant No. 2 filed written statement stating that late Narsimha Reddy executed a will on 21-1-1964 bequeathing all his properties to defendant No. 1, his only son and as such the plaintiff is not entitled for any share in the property as she was married in 1942. Defendant No. 3 did not take part in the proceeding and remained ex-parte. Subsequently, defendant No. 2 died (i.e. mother of plaintiff and defendant No. 1). Thereafter plaintiff filed a petition seeking amendment of the plaint claiming 1/6th share in the family properties.

3. On the basis of above pleadings, the trial court framed the following issues:--

Issue No. 1:-- Whether the plaintiff is entitled for a share in the suit properties and for division and for separate possession of the same?

Issue No. 2:-- Whether the Will dated 21-1-1964 executed by D. Narasimha Reddy alias Narasa Reddy in favour of 1st defendant is true, valid and legal and binding upon the Plaintiff?

Issue No. 3:-- In the event of partition whether the debts contracted by the 1st defendant as mentioned in the written statement are binding upon the Plaintiff?

Issue No. 4:-- In the event of partition whether a provision has to be made for the marriage expenses of 1st defendant''s daughter?

Issue No. 5:-- Whether plaintiff has been in joint possession of suit properties along with the 1st defendant?

Issue No. 6:-- Whether the court fee paid is not correct?

Issue No. 7:--To what relief?

4. On behalf of the plaintiff while she herself was examined as P.W.1 and got marked documents Exs.A-1 to A-5, on behalf of the defendants four witnesses were examined and 29 documents were marked.

5. Defendant No. 1 got himself examined as D.W.1, and examined the scribe of the will as D.W.2. D.W.3 is the Attestor of the Will. D.W.4 was the son of the another Attestor Dora Swamy Reddy.

6. On appreciation of both oral and documentary evidence, the Trial court believed the execution of the will and dismissed the suit.

7. Aggrieved by the judgment and decree of the trial court, the plaintiff preferred A.S.No. 163/91 before the appellate court. The appellate court through its judgment dated 13-2-1996 having not believed the execution of the Will, reversed the judgment of the Trial Court on the ground that the defendant did not satisfactorily explain the suspicious circumstances that came to light in the execution of the Will i.e. Will dated 21-1-1964 which is an unregistered Will. The suspicious circumstances as per the appellate court are:

(1) The testator died six years after its execution and he has not taken any steps to register the Will

(2) Will was not filed along with written statement, but, it was filed at a later stage.

(3) The propounder took active part in execution of the Will and he being the sole beneficiary under the Will did not adduce any evidence, that the testator executed the will with a free mind and executed the will in a sound and disposing state of mind, but not under any coercion.

(4) The scribe and attestators are close relatives of defendant No. 1 i.e. while D.W.2 scribe is the co-brother of defendant No. 1. D.W.3 is the senior paternal uncle''s son and the other attestator late Doraswamy Reddy is the father-in-law of defendant No. 1.

(5) The appellate court further held that no provision was made for wife and daughter.

(6) No mention was made in the Will that it was the last will. Hence, the appellate court held that the execution of the Will by late Narsimha Reddy is doubtful. Hence, this second appeal.

8. Since, both the courts concurrently found that Ex.B-3 the unregistered Will was executed by late Narsimha Reddy, the only question that falls for consideration in this second appeal would be to what extent the Appellate Court is justified in reversing the judgment of the Trial Court?

9. In H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, a full Bench of the Supreme Court adumbrated certain parameters to find out whether the Will was executed by the testator, whether the testator at the relevant time was in sound and disposing state of mind that he understood the nature and effect of the disposition and put his signature to the document of his own free will and that was the last will. Under the circumstances, there arises a doubt as to whether testator was acting of his own free will in executing the will and in such circumstances, the initial onus lies on the propounder to remove any such legitimate doubts in the matter. It is useful to extract the relevant portion of the judgment;

"What is the true legal position in the matter of proof of wills presents a recurring topic for decisions 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 the 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, Evidence Act are relevant for this purpose. u/s 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 hand writing under.Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the hand writing 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 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 except proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

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.

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 circumstances 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 emphasizes 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."

10. In Rani Purnima Debi v. Kumar Khagendra Narayan Debal 1962 SC 567 their lordships of the Supreme Court held that if the propounder of the Will fails to explain the suspicious circumstances satisfactorily, the court has to hold that the Will is most unnatural.

11. In Guro (Smt.) Vs. Atma Singh and Others, to the same effect in Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others, . Supreme Court held that since the Will is sought to be proved after the person executing the document died, it is the duty of the propounder to explain the suspicious circumstances surrounding the execution of the will and their lordships observed;

"(1) The propounder taking a prominent part in the execution of a Will which confers substantial benefits on him; (2) Shaky signature; (3) A feeble mind which is likely to be influenced; (4) Unfair and unjust disposal of property are some of the suspicious circumstances to be explained by the propounder."

12. In Raj Kumar Deen (died) per L.Rs. Vs. Dr. A.S. Din, it is held that;

Head note : A:--

"Unnatural disposition of the properties excluding entirely the other son and daughter of the testator --Genuineness of the signatures of testator and attestors of the will doubtful - Part played by advocate preparing the will not proved -Propounder failed to explain the above said suspicious circumstances -Rejection of the will - Valid"

13. In Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, their lordships of the Supreme Court observed thus;

"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"

14. In the light of the above case law, now I proceed to examine whether suspicious circumstances pointed out by the appellate court really warrant the court not to accept the Will as genuine one.

15. The first circumstance pointed out by the appellate court is that the Will executed on 21-1-1964 remained unregistered during the lifetime of the testator, who died in 1970. The law on this aspect is well settled. There is no compulsion under law that all the Wills need to be registered. Law permits execution of an unregistered Will also. In fact, in the reply notice Ex.A-3 given by the first defendant he alleged that the plaintiff herself is aware of the execution of the Will by his late father. Since, he refused to take her daughter as his daughter-in-law, she has now

set up this claim. In fact the other sister i.e. third defendant as well a their mother did not support the plaintiff in her version. Human nature is such that if a person is likely to get substantial interest in the property, no one will leave it so easily. Of course, during the trial the defendant did not establish the fact, that the plaintiff is aware of the execution of the Will. Hence, on that ground itself, it cannot be held that it is a suspicious circumstance to hold that the Will was not executed by the testator. In fact, the contention of the plaintiff was that her father used to sign as Narsa Reddy, but not as Narsimha Reddy. Likewise, she also contended that there was some gap in the body of the will and the signature of the executant. If the plaintiff is alleging that the Will was brought into existence, nothing prevented her from sending the document for the opinion of the hand-writing expert. But that was not done in this case. In fact, the plaintiff has taken inconsistent stands with regard to the execution of the Will. At one breath she says that the will was brought into existence by her brother-defendant No. 1 and at another breath she says that the blank signed paper left by her late father was used to bring into existence the will. In fact, during the cross-examination of the witnesses, she could not elicit anything. Likewise, Sri Vidya Sagar, learned counsel appearing for the respondent, brought to my notice that in the reply notice, Ex.A-3 the defendant simply stated that he got the properties under a will executed by his late father, but he did not give the date in the will. Likewise, though the date of execution of the will was mentioned in the written statement, the defendant did not choose to file the Will along with the written statement on 18-9-1978. The Will was produced in the Court on 8-7-1982. All these circumstances may lead to a suspicion that the Will was brought into existence by the defendant No. 1, after the death of his father. The best course would have been to obtain a hand writing expert opinion than beating around the bush and to make a feeble case out of the circumstance, when the execution of the Will was proved in accordance with law. Secondly, the second contention of Sri Vidya Sagar appearing for the respondent is that the will was not filed along with the written statement as required under Order VII Rule 8-A C.P.C. It is true that the Will was not filed along with the Written Statement, but subsequently the Will was filed in the court along with the petition to receive the documents and the court received the said documents. At that point of time, the plaintiff did not raise any objection. Sri Vidya Sagar learned counsel for the respondent cited a judgment of the Supreme Court in Madanlal Vs. Shyamlal, in support of his contention;
That it is open to the appellant to raise his contention at the appellate stage, even after a decree was passed against him.

16. It is true in this case, their lordships pointed out that even if the order is erroneous, a revision would not even maintainable u/s 115 of C.P.C. since, material irregularity in exercise of the jurisdiction do not cover either erroneous fact or law. Hence, it is open to the appellant to raise his contention at the appellate stage, if decree is passed against him.

17. Assuming for a moment that the Will was not filed along with the written statement; it is always open to the parties to seek permission of the court under Order 13 Rule 2 C.P.C. for producing the document. Assuming that there is delay in producing the Will in the court, again it is only a suspicious circumstance, but it cannot be definitely said that the document was brought into existence after the written statement was filed in the court.

18. The next question that falls for consideration would be as to whether on that ground, the court can invalidate the Will; I have given my anxious thoughts to this issue keeping in mind the laxity on the part of the members of the legal fraternity which is often noticed by this court and I have gone through the evidence of the witnesses to see as to whether the plaintiff could elicit anything from the witnesses examined on behalf of the defendant to show that the document was brought into existence after the written statement was filed in the court. No such suggestions were even made to any of the witnesses in the cross-examination. Hence, it is highly difficult to hold that the document was brought into existence after the written statement was filed in this case, even the Appellate Court did not go to that extent in its judgment, while reversing the judgment of the Trial Court.

19. The third circumstance is that the Propounder must have taken active part in the execution of the Will and he is the sole beneficiary. The defendant in the witness box admitted that he was present at the time of the execution of the Will and the entire property was given to him. In V. Venkateswara Rao Vs. Y. Nageswara Rao and others, a learned Single Judge of this court held that, the doubt about the genuiness of the execution of the Will is that; the Will has been produced into the court after five years, after filing of the suit. His lordship has taken note of the affidavit filed in support of the petition under Order 13 Rule 2 C.P.C. No reasons were given for producing the Will after filing of the suit and this circumstance creates a suspicion over the genuiness of the Will and it does not satisfy the judicial conscious of the court. One should not forget the fact that the plaintiff gave notice-Ex.A-1 on 28-10-1977 and immediately on 10-11-1977 the defendant sent reply notice-Ex.A-3 wherein he not only categorically stated that his father bequeathed the property to him, but also alleged that she is claiming share in the property as he refused to take her daughter as his daughter-in-law. Thereafter, the plaintiff filed suit on 31-12-1977 and the defendants filed the written statement on 18-9-1978, i.e. nearly one year after the exchange of notices. If the defendant wants to fabricate the document, I am sure, this one year time is more than sufficient and he need not wait for another four years to bring this document into existence. At any rate, he stated in the written statement that the Will is dated 21-6-1964. It is true the will is expected to be filed along with the written statement. But, it is the primarily function of the counsel who is well versed with the court''s procedure. In fact, the Interlocutory Application which was filed in support of the petition to receive this document as evidence, was also not available in the file. We should not forget the fallen standards in the legal profession and we cannot fasten the liability on the innocent and illiterate litigant

public for the lapses committed by the members of the legal fraternity, even though it is only a suspicious circumstance.

20. The next suspicious circumstance, that was pointed out by the learned counsel is that the defendant No. 1 being the beneficiary under the Will took active part in the execution of the Will. The defendant No. 1 admitted that he was present at the time of the execution of the will and he is the beneficiary under the Will. But, again in the cross-examination of either defendant No. 1 or other witnesses, not even a suggestion was made that the defendant coerced his father to bequeath all his property in his favour or he is not having sound mind at the time of the execution of the Will as pointed out earlier. The case of the plaintiff is that her father used to sign as Narsa Reddy and to prove this she got Ex.A-4 marked. But at the same time voluminous documentary evidence was marked on behalf of the defendant. Exs.B-6 to B-28 to show that late Narsimha Reddy used to sign both as Narsa Reddy as well as Narsimha Reddy (in O.S.No. 207/78). Ex.B-1 partition deed executed between Narsimha Reddy and his brother. Ex.B-2 is plaintiff''s marriage card. Wherein the testator was described as Narasimha Reddy.

21. Nextly we must keep in mind that this Will was executed at a time, when the legal changes that were brought in favour of the Hindu women in 1956 were not fully understood by the public and still they are under the impression that male progeny alone is eligible to inherit the property, since, they will be given sufficient properties by way of gift at the time of marriage of the woman depending upon their status. Admittedly the plaintiff was married in 1958 and even according to her, she was given Rs. 4000/- in cash towards ''Paspukumkumma''. Hence, in Hindu religion it is not unusual that the father gives left out properties to the son or sons after celebrating the marriages of the daughters. Further while the mother supported defendant No. 1 the other sister did not participate in the proceedings, though she was made party defendant. Hence, I am of the opinion that merely on the ground that the property was given to the defendant No. 1, the execution of the Will cannot be doubted. In fact in a recent judgment i.e., S. Sundaresa Pai and Others Vs. Sumangala T. Pai and Another, Supreme Court held thus:

"The uneven distribution of the assets amongst children, by itself, cannot be taken as circumstance causing suspicion surrounding the execution of the will."

22. In the same judgment their lordships also held that;

"merely on the ground that the Will is unregistered, which cannot be treated as a circumstance to dub it unnatural"

23. The next suspicious circumstance pointed out is that no provision was made by the testator to his wife and daughter. In fact in this case, the wife of the testator as defendant No. 2 filed written statement supporting the contention of her son and he never made any grievance. The other sister of the plaintiff, defendant No. 3 did not participate in the proceedings. Hence, on the ground that no provision was made in

the Will for the wife and daughters, the Will cannot be treated as unnatural.

24. The other suspicious circumstance pointed out by the counsel is, that the scribe of the Will who is D.W.2 is no other than the co-brother of defendant No. 1. D.W.3 one of the attestors is the son of senior paternal uncle. The other witness to the Will is Dora Swamy who is no other than the father-in-law of defendant No. 1 and they belong to different village, to identify his signature his son was examined as D.W.4. In the cross-examination, they stated that having come to know that the testator at that point of time was suffering with swollen legs they came to the place to see him. The testator was in sound mind at the time of execution of the Will. In fact, the testator lived for six long years after the execution of the Will. Hence, in the absence of any cogent evidence to prove that the Will was not executed or that the Will was fabricated or that it was executed when the testator was not in sound mind or under duress and coercion, this suspicious circumstance raised by the plaintiff to dub the Will as unnatural cannot be accepted, since any amount of suspicion cannot take the place of proof. In Madhukar D. Shende Vs. Tarabai Aba Shedage, the Supreme Court held:

"The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand and weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by way ward pelting of stones of suspicion and supposition by way farers and waylayers. What was told by Baron Alderson to the jury in R.V. Hodge may be apposite to some extent.

The mind was apt to take a pleasure in adapting circumstances to one another and even in staining them a little, if need be, to force them to form parts of one connected whole, and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to over reach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof

nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict -- positive or negative.

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

25. Hence, while well founded suspicion may be the ground for a closure scrutiny of suspicion, that cannot form the basis for a judicial verdict and when once the propounder of the Will produces prima facie evidence proving the competence of the testator, execution of the Will in the manner contemplated by law and opposing party has to bring material on record to disprove the case of the propounder of the Will. Admittedly, in this case, the plaintiff failed to bring on record any evidence that the testator was not in sound mind or was not competent to execute a Will or that it was not executed in a manner contemplated by law. Both the courts held that the Will was executed as per the requirements of law, but the appellate court reversed the judgment of the Trial Court, solely on the ground that the suspicious circumstances were not properly explained by the propounder and it has to be held that the Will is to be declared as unnatural disposition of the properties.

26. For the foregoing discussion, I have no hesitation, except to set-aside the judgment and decree of the appellate court in A.S.No. 163 of 1999 and confirm the judgment of the Trial Court dismissing the suit for partition. Accordingly, the appeal is allowed. No order as to costs.