

(2013) 04 MAD CK 0302

Madras High Court

Case No: T.O.S. No. 8 of 2008 (O.P. No. 870 of 1999)

E. Vedagiri

APPELLANT

Vs

Vs. D. Vijayalakshmi

RESPONDENT

Date of Decision: April 30, 2013

Citation: (2013) 3 CTC 758

Hon'ble Judges: R. Karuppiah, J

Bench: Single Bench

Judgement

R. Karuppiah, J.

The Plaintiff filed a Petition in O.P. No. 870 of 1999 for Probate of a Will executed by Late Mrs. E. Kuppammal, wherein, it is stated that the suit property was originally belonging to the said Late Mrs. E. Kuppammal, wife of Late Thiru K. Ekambaram and their legal heirs are: (i) V. Sai Prasad, (ii) D. Vijaya Lakshmi, (iii) Jeevakumar, (iv) E. Ganesh Kumar, (v) S. Palani, (vii) Mahalakshmi, and (viii) S. Selva Ganesh. It is also stated in the O.P., that the above said Mrs. E. Kuppammal executed a Will on 10.4.1994 in the presence of witnesses and in the said Will, the deceased Kuppammal appointed the Plaintiff as an executor and she died on 24.2.1997. Therefore, the Plaintiff filed the above said O.P. for grant of Probate of the Will by impleading 8 Respondents and among them, except the Defendant, namely, D. Vijaya Lakshmi, all other Respondents have not objected the above said Will by filing their Consent Affidavits. The Defendant alone objected to probate the above said Will and hence, the above said OP was converted as T.O.S. No. 8 of 2008. The Defendant has not disputed that the suit property originally belonged to Late Mrs. E. Kuppammal and also not disputed the relationship of the parties. According to the Defendant, Late Mr. K. Ekambaram, husband of Late Mrs. E. Kuppammal, during his life time, maintained the suit property and he assured that both the daughters, namely, S. Suseela and the Defendant, namely, D. Vijaya Lakshmi will be allotted second floor and the said Mr. Ekambaram died in February, 1970. After the death of Ekambaram, the property was under the control and management of Mr. E. Viswanathan being the brother of this Defendant. The mother of the Defendant,

namely, deceased E. Kupppammal along with three children of the pre-deceased sister, namely, Mrs. S. Suseela were living jointly in the above said property. The above said Suseela died in the year 1990. The eldest son, namely, E. Viswanathan died in the year 1993 and thereafter, the Plaintiff forcibly took full control and management of the property and collected several lakhs as rent advance and maintained in the Bank Account. The owner of the property, namely, Late Mrs. E. Kupppammal died on 24.2.1997. During the 11th day ceremony, it was assured that all the children will have equal and simultaneous shares in the property and the Plaintiff never objected of such proposal and only after 19 months, for the first time, the Plaintiff informed this Defendant over phone that a Will is available, but failed and neglected to give a copy in spite of Defendant's son, namely Senthil's demands. Therefore, the non-publication of the alleged Will for four years after its execution and two years after the death of Late Mrs. E. Kupppammal establishes that the alleged Will is unnatural and fabricated. Further, the deceased Mrs. E. Kupppammal maintained a Bank Account and she used to sign and operate the account. The two alleged Attesting Witnesses are the close childhood friends of the Plaintiff. The deceased Mrs. E. Kupppammal was a chronic diabetic patient with poor vision and she was going into coma in the year 1994, 1995 & 1997 and she died on 24.2.1997. It is also denied the averments in the Plaint that the testatrix subscribed her name and signed in English and also denied that the Attesting Witnesses had visited the testatrix on her request. At the relevant time, the testatrix did not make any mention about any document to the Defendant. Therefore, the Defendant prayed to dismiss the Probate proceedings.

2. After considering the above said pleadings, this Court has framed the following issues:

(i) Whether the Plaintiff is entitled to the grant of Probate in terms of the Will of the deceased Mrs. E. Kupppammal dated 10.4.1994?

(ii) To what other reliefs the parties are entitled to?

(iii) Whether the Will produced by the Plaintiff is a genuine and legally enforceable?

3. To prove the above said Will, the Plaintiff himself deposed as PW 1 and also examined one Balasundaram who is one of the Attesting Witness of the above said Will as PW 2 and one Mr. Sai Prasad S/o. Late E. Viswanathan who is the eldest son of the testatrix, namely, Late Mrs. E. Kupppammal, as PW 3 and also examined one S. Shankar, who is the Manager in Central Bank of India as PW 4. On the side of the Plaintiff, 20 documents were marked as Exs. P1 to P20. Ex. P1 is the Death Certificate of the Testatrix Late Mrs. E. Kupppammal, Ex. P2 is the Will executed by Late Mrs. E. Kupppammal, Ex. P3 is the Affidavit of assets, Exs. P4 to P10 are the consent Affidavits filed by other Respondents in the OP, Exs. P11 to P14 are the original Lease Agreements, Ex. P15 is the Affidavit of Attesting Witness, Ex. P16 is the Bank Card issued by the Central Bank of India with photos and LTI of the deceased Late Mrs. E.

Kuppammal to prove her specimen signatures and another. Ex. P17 is the copy of the Application for opening Savings Bank account. Ex. P18 is the Xerox copy of the Letter sent by the Plaintiff to the Defendant, Ex. P19 is the legal Notice sent by the Plaintiff to the Defendant's Counsel and Ex. P20 is the Death Certificate of one of the Attesting Witnesses in the Will, namely, J. Mahadevan.

4. On the side of the Defendant, the Defendant herself deposed as DW 1 and also examined her son, namely, Senthil Kumar as DW 2 and marked two documents as Exs. D1 & D2, namely, Encumbrance Certificate and legal notice issued by the Defendant's Counsel to the Plaintiffs Counsel.

5. Issue Nos. 1 & 3:

Both sides admitted that the suit property originally belonged to Late Mrs. E. Kuppammal and also admitted the relationship between the parties. Admittedly, the above said Late Mrs. E. Kuppammal died on 24.2.1997. The Plaintiff has originally filed a Petition in O.P. 870 of 1999 for grant of Probate of the above said Will said to have been executed by Late Mrs. E. Kuppammal on 10.4.1994. Except the Defendant who is one of the daughters of the deceased, all other legal heirs, namely, (i) V. Sai Prasad, (ii) Jeevakumar, (iii) E. Ganesh Kumar, (iv) S. Palani, (v) Mahalakshmi, and (vi) S. Selva Ganesh have filed their consent Affidavits and not objected the Will. Therefore, the above said OP was converted into the present Testamentary Original Suit.

6. Being the propounder of the Will, the onus is on the Plaintiff to prove the execution of the Will as per provisions of Section 63 of the Indian Succession Act and 68 of the Indian Evidence Act and also to remove all the suspicious circumstances raised by the other side.

7. It is worthwhile to Act reads as under:

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:-extract the relevant provisions of Indian Evidence Act and Indian Succession Act, regarding proving of a Will.

Section 63 of the Indian Succession -

(a) The Testator shall sign or shall affix his mark 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.

Section 68 of the Indian Evidence Act reads as under:

68. Proof of execution of document required by law to be attested.-- 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.]

8. In the instant case, the Plaintiff has marked the above said alleged Will executed by the Testatrix, namely, Late Mrs. E. Kuppammal as Ex. P2. A perusal of Ex. P2-Will reveals that it is unregistered one and executed on 10.4.1994 by Late Mrs. E. Kuppammal, wherein, she affixed her LTI and one Mahadevan and Balasundaram had affixed their signatures as Attesting Witnesses. It is not in dispute that the Testatrix, namely, Late Mrs. E. Kuppammal died on 24.2.1997. To prove the same, the Plaintiff has marked Ex. P1-Death Certificate of the testatrix. It is also not in dispute that one of the Attesting Witnesses, namely, Mahadevan also died and to prove the same, the Plaintiff has marked Ex. P20-Death Certificate of said Mahadevan, in which, it is stated that he died on 2.4.1997. The only Attesting Witness available, namely, Balasundaram was examined on the side of the Plaintiff as PW 2.

9. The above said PW2-Balasundaram who is only available Attesting Witnesses, has deposed before this Court and in his chief-examination, he stated as under:

I know E. Kuppammal, mother of the Petitioner as they are our family friends. I am the second witness in Ex. P2-Will executed by Late E. Kuppammal. Ex. P2-Will was written on 10.4.1994. My friend one Mahadevan called me over phone informing that Mrs. Kuppammal wanted to execute a Will and therefore, requested me to come as a common person to see the execution. I was informed by Mahadevan that Ex. P2-Will was prepared by one Advocate. The said Mahadevan had signed in Ex. P2-Will as first Attesting Witness. At the time of affixing her thumb impression in Ex. P2, Mrs. Kuppammal was in sound state of mind and health. Myself and Mahadevan were present while Kuppammal affixed her thumb impression in Ex. P2. Apart from 3 of us, there was no one while Mrs. Kuppammal affixed her thumb impression.

After Kuppammal affixed her thumb impression under Ex. P2, both myself and Mahadevan signed as Attesting Witnesses in the said Ex. P2. I know the Plaintiff who was my school mate and family friend. The Plaintiff was not present at the time of execution of the Ex. P2-Will. Since Kuppammal personally requested myself and the other Attesting Witness Mahadevan not to reveal the fact of the execution of the Will. I did not reveal the same to anyone including the Plaintiff. I had filed an Affidavit as an Attesting Witness before this Court. Ex. P15 is my Affidavit as Attesting Witness. At the time of execution of Ex. P2-Kuppammal had good vision and was in sound state of mind and health and also invited me to attest the Will.

10. At the time of cross-examination also, PW 2 has deposed that Mr. Mahadevan died about 7 or 8 years back and further, he clarified that by stating that "I have stated in chief-examination with respect Ex. P2 is written is only means type written and not hand written". He further deposed at the time of cross-examination that he did not know whether the Testatrix used to sign in English or Tamil since the hands of testatrix were shivering, she had affixed her thumb impression and only at the time of affixing LTI, he came to know that she had shivering and further he clearly denied the suggestion that Ex. P2 is a forged Will.

11. A careful reading of the entire oral testimony of PW 2, who is the only available Attesting Witness, reveals that Ex. P2-Will was executed by the Testatrix, namely, Late Mrs. E. Kuppammal and she had affixed her thumb impression in the above said Will in the presence of two witnesses, namely, PW 2 one Balasundaram and one Late Mahadevan and both the above said Attesting Witnesses also affixed their signatures in the presence of the testatrix and therefore, the Plaintiff has proved by examining the PW 2 that the above said document, i.e. Ex. P2-Will was duly executed by the Testatrix. The Plaintiff also proved that the other Attesting Witness, namely, Mahadevan died. Therefore, the Plaintiff proved the above said Ex. P2-Will was executed by the Testatrix as per the provisions, viz., Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

12. The Testatrix Late Mrs. E. Kuppammal bequeathed the suit property in favour of her three sons equally, namely, Vedagiri (Plaintiff), Jeeva Kumar and Ganesh Kumar and also grandson Sai Prasad who is the son of the deceased eldest son, namely Viswanathan. Further the testatrix imposed a condition that after the death of Testatrix, if any one wants to sell the property, only on information and consent from other co-sharers, they have to sell the property. It is also averred in the Will that at the time of marriage of her daughters, both the Testatrix and her husband had given gold and silver jewels and amount to them, even then, all the three sons and the grand son should give Rs. 50,000/- each to the children of the deceased daughter Suseela, namely, Palani, Ganesh, Mahalakshmi and Selva Ganesh and also stated that Rs. 1,50,000/- to be given to another daughter, namely, Vijayalakshmi, i.e. the Defendant in this Suit. Therefore, a perusal of Ex. P2-Will reveals that the Testatrix, namely, Kuppammal has bequeathed the suit property to all the sons and

children of pre-deceased son and also directed to give amount to the legal heirs of the deceased daughter and also another daughter, namely, the Defendant. Therefore, there are no suspicious circumstances arise in the execution of the Ex. P2-Will as rightly contended by the learned Counsel for the Plaintiff.

13. However, in the instant case, only the Defendant alone objected the genuineness of the Ex. P2-Will but all other legal heirs have accepted the Will as a genuine and valid document. The sole Defendant who is one of the daughters of the Testatrix has raised the following suspicious circumstances regarding the Ex. P2-Will, viz.,--

1. There is an abnormal delay, i.e. 19 months in filing the OP for grant of Probate of the Will;

2. The Testatrix Late Mrs. E. Kuppammal always signed in Tamil and she never had the habit of affixing LTI and she maintained the Bank Account and used to sign to operate the account.

3. The Testatrix was a chronic diabetic patient with poor vision and she was going into coma stage in the year 1994, 1995 & 1997 and therefore, there was no probability of executing the Will by the testatrix.

4. There is no mention about the jewellery of the Testatrix in the above said Will.

5. The Defendant alone taking care of the Testatrix at Sundaram Medical Foundation and during that time, the Testatrix had never informed about the Will.

6. The Testatrix had personally informed the Defendant that as per wishes of Late Ekambaram, husband of the of the Testatrix, the Defendant will be allotted half portion in the second floor.

7. The alleged two Attesting Witnesses are close childhood friends of the Plaintiff.

14. As already stated, the Plaintiff, being the propounder of the Will, has to be remove the above said suspicious circumstances raised by the Defendant.

15. The learned Counsel appearing for the Plaintiff would submit that the Plaintiff has examined four witnesses and all the above said suspicious circumstances raised by the Defendant are removed by the oral testimonies of PWs. 1 to 4 as well as documentary evidence under Exs. P1 to P20. It is further submitted that the Defendant has not produced any reliable oral or documentary evidence to prove the contentions raised in the Written Statement.

16. With regard to the first suspicion, i.e. there is abnormal delay in filing the OP for grant of Probate of the Will is concerned, the learned Counsel for the Plaintiff would submit that the Plaintiff came to know about the existence of the Will only after the first death anniversary of the Testatrix through PW 3-Sai Prasad, who is the son of the deceased brother of the Plaintiff. According to the Plaintiff, the above said PW 3

along with his mother was residing with the Testatrix in the same premises and he wanted to occupy a room of the Testatrix after the first death anniversary of the Testatrix and till such time, the above said place was not occupied by anyone and while clearing the bureau belonging to the testatrix, an envelop was found containing some original documents including one closed cover which was handed over to the Plaintiff being the eldest male member of the family by the said PW 3-Sai Prasad and when the Plaintiff opened the envelop only, he came to know of the existing Will and in such circumstances, there is delay occurred in filing the OP for grant of Probate of the Will. To prove the above said contention, the Plaintiff deposed as PW 1 that after the first death anniversary of his mother, PW 3 requested him for occupying a room, which was occupied by his mother and after three or four months from the first death anniversary, PW 3 occupied the room and while he was clearing the bureau belonging to the Plaintiff's mother, he found an envelop and told the Plaintiff that there was an envelop containing some original documents and asked the Plaintiff whether he can hand over the same to the Plaintiff. PW 3 also told that one closed cover was also found along with the documents and then he came and handed over all the documents including the closed cover to the Plaintiff and then the Plaintiff came to know about the existence of the Will in the said envelop. PW 3-Sai Prasad also deposed that after three or four months after the first death anniversary of his grandmother, he requested his paternal uncle, i.e. the Plaintiff for using the room which was under the occupation of his grand mother, i.e. testatrix and while he was cleaning the room, the bureau was opened and a cover was found wherein, title deeds of the property and a sealed cover were found. PW 3 asked PW 1 whether the above said documents can be handed over to the Plaintiff and as per the instructions of the Plaintiff, he handed over the same to the Plaintiff. After receipt of the same, the Plaintiff opened the cover in the presence of PW 3 and found Ex. P2-Will. Therefore, from the said oral testimony of PWs. 1 & 3, it is clear that only after three or four months from the date of first death anniversary of the Testatrix, the above said Will was brought to the notice of the Plaintiff and therefore, the delay was occurred in filing the OP for grant of Probate of the Will.

17. The learned Counsel for the Defendant would submit that in the OP filed for grant of Probate, the Plaintiff has not stated the fact that one Sai Prasad had handed over the Will the Plaintiff and also the fact that the said Sai Prasad came and handed over the envelop and documents at the residence of the Plaintiff and therefore, the evidence adduced on the side of the Plaintiff is false and cannot be accepted. It is further contended that PW 1 at one place, deposed that the said Sai Prasad left his house and he did not know what was inside the envelop, but the same witness deposed that he opened the envelop in the presence of Sai Prasad and only thereafter, Sai Prasad left the house and therefore, there is contradiction in PWI's evidence.

18. As already stated, PW 1 has clearly deposed in the chief-examination and cross-examination that three or four months after the first death anniversary of the Testatrix, while PW 3 was cleaning the bureau, he found the above said documents and then only the Plaintiff came to know about the existence of the above said Will and therefore, the above said fact was proved by the Plaintiff by examining himself as PW 1 apart from examining PW 3-Sai Prasad and the above said oral testimonies of both the witnesses is reliable and therefore, the suspicious circumstance raised by the Defendant that there is abnormal delay in filing the OP is removed by the Plaintiff and satisfactorily explained the delay.

19. The next suspicious circumstance raised by the Defendant is that the testatrix Late Mrs. E. Kuppammal always signed in Tamil and she never had the habit of affixing LTI and the contention of the Plaintiff that the Testatrix had affixed her LTI in the Will is utter false and the above said Will is unnatural and fabricated in order to disinherit the Defendant to the property. Learned Counsel for the Defendant further submitted that the Testatrix maintained a Bank Account and she used to put her signature and operate the same and therefore, the said Ex. P2-Will is fabricated. But the Defendant has not produced any documents to prove the above said fact that during the period of execution of the Will, Late Mrs. E. Kuppammal used to sign and not affix the LTI and also not examined any bank officials to prove the same. Per contra, on the side of the Plaintiff, PW 1 who is the Plaintiff in the Suit and PW 2, who is the Attestor of the Will and PW 3-Sai Prasad are examined to prove the above said fact that at the relevant period of execution of the Will, the Testatrix used to affix her LTI. Further, the Plaintiff examined PW 4, namely, T. Shankar, who was the Branch Manager of the Central Bank of India, Teynampet Branch, Chennai and also marked Ex. P16-Specimen Signature Card with the photographs of the account holder in which, the deceased E. Kuppammal affixed her LTI and also produced before the Court the original Application for opening the Savings Bank Account and a copy of the same is marked as Ex. P17, wherein, the LTI of the deceased was found. The date of affixing the above said LTI is 21.2.1994, i.e. two months prior to the execution of the will, the testatrix had affixed her LTI in the Application for opening Bank Account. Further, on the side of the Plaintiff, has produced Exs. P11 to P14-Rental Agreements entered into between the deceased Kuppammal and the tenants and in the said Agreements, the deceased Kuppammal affixed her LTI and the said documents were executed on 10.2.1994, i.e. prior to the date of Ex. P2-Will. From the above said documents also, it is clearly proved that even prior to Ex. P2-Will, the testatrix had used to affix LTI in the documents. Therefore, the Plaintiff has produced documents to prove that the Testatrix used to affix her LTI even prior to the execution of the Ex. P2-Will. But on the side of the Defendant, has not produced any piece of evidence to prove that the fact that the testatrix used to put her signature during the period of the execution of the Will and the Bank Account also not produced to prove the averments made in the Written Statement. Therefore, the above said suspicious circumstances raised by the Defendant is

removed by the Plaintiff by adducing reliable oral and documentary evidence.

20. Another suspicious circumstance raised by the Defendant is that immediately after the death of the Testatrix, particularly during the 8th day and 11th day ceremony and even at the first death anniversary day of the deceased Testatrix, PW 2, who is alleged Attesting Witness has not informed the existence of the Will even to the Plaintiff or the other relatives and therefore, it creates a serious doubt about the execution of the Will. PW 2 the alleged Attesting Witness, namely, Balasundaram has clearly deposed before this Court that the Testatrix had personally requested him not to reveal the fact of the existence of the Will to anyone and therefore, he did not disclose the same to the Plaintiff or the relatives. Further, from the oral testimony of PWs. 1 to 3, it is clearly proved that the above said Will was found only at the time of cleaning the bureau of the deceased testatrix by PW 3 and therefore, the above said suspicious circumstance raised by the Defendant is also removed by the Plaintiff.

21. Another suspicious circumstance raised by the Defendant is that as on the date of execution of the Will, the testatrix, namely, Late Mrs. E. Kuppammal was admitted in the hospital and she was in coma stage and therefore, she could not execute the above said Will and it is fabricated one. The date of the execution of the Ex. P2-Will is 10.4.1994 and the deceased Late Mrs. E. Kuppammal died on 24.2.1997, i.e. after three years from the date of the execution of the Will. Admittedly, the Defendant was married in the year 1969 and lived separately. The Defendant as DW 1 at the time of evidence, has deposed, "I do not know my mother had executed Ex. P2-Will and even in the hospital and she did not tell me". She further admits that she has not filed any such proof to show that the Testatrix was in coma stage at the time of execution of the Will. A perusal of the averments stated in the Written Statement only show that Late Mrs. E. Kuppammal was a chronic diabetic patient with poor vision and she was going into coma stage in the year 1994, 1995 & 1997 and she died on 24.2.1997. But except the oral testimony of the Defendant and her son DW 2, no other oral or documentary evidence to prove that at the time of execution of the alleged Will, Late Mrs. E. Kuppammal was a chronic diabetic patient with poor vision and she was going into coma stage. Except the Defendant who is one of the daughters of the deceased Testatrix and her son DW 2, no other relative or any other reliable witness was examined on the side of the Defendant to prove the fact that the deceased was going into coma stage at the time of execution of Ex. P2-Will. Per contra, on the side of the Plaintiff, has examined PW 2, who is one of the Attesting Witnesses and also the Plaintiff deposed as PW 1 & PW 3-Sai Prasad who is the grand son of the deceased Testatrix was also examined and all the witnesses have categorically denied the contention of the Defendant. Therefore, the Defendant has not substantiated her contention by adducing any reliable oral or documentary evidence and therefore, the above said suspicious circumstance raised by the Defendant is also removed by the Plaintiff by examining reliable and acceptable oral evidence.

22. The next suspicious circumstance raised by the Defendant is that no reference about the jewellery by the deceased Testatrix in the above said alleged Ex. P2-Will and it creates a doubt about the genuineness of the Will. This contention cannot be accepted since the Testatrix had executed the Will only relating to her immovable property alone. Mere non-mentioning of jewels in the Ex. P2-Will cannot invalidate the Will or creates any suspicious circumstance regarding the execution of the Will and therefore, the above said suspicious circumstances raised by the Defendant cannot be accepted.

23. The learned Counsel appearing for the Defendant submitted and also stated in the Written Statement that the Defendant's father Late Ekambaram was maintaining the property belonging to his wife, i.e. deceased Testatrix and he gave assurance to the Defendant to give half share in the second floor to two daughters each, namely, the deceased Suseela and the Defendant and therefore, the above said Will could not be executed by the Testatrix. Admittedly, the property mentioned in the Will belonged to the deceased Testatrix E. Kupppammal and it is not in dispute. Her husband Ekambaram was pre-deceased to the testatrix, i.e. he died in February, 1970. The Defendant has not stated anywhere in the Written Statement or in her evidence that Late Mrs. E. Kupppammal had given assurance to give half share in the second floor each to the deceased Suseela and the Defendant. Except the interested testimony of D.Ws. 1 & 2, the Defendant has not adduced any oral or documentary evidence to prove that her father Late Ekambaram had given assurance to the Defendant to allot shares in the second floor. Further, in the Written Statement itself, it is admitted that one Viswanathan, the eldest son of the deceased Kupppammal died in the year 1993 and thereafter, the Plaintiff took full control and management of the property and collected several lakhs of rupees by way of rental advance and maintained in the Bank Account. Admittedly, the Testatrix Late Mrs. E. Kupppammal died on 24.2.1997. This OP was filed in the year 1999. The Defendant has not claimed any right in the suit property immediately after the death of the Testatrix and she had not filed any Suit claiming her share in the suit property. Except the Defendant, all other legal heirs of the deceased have given Consent Affidavits by stating that the above said Ex. P2-Will is genuine document and also filed Consent Affidavits reporting no objection for grant of Probate of the Will. Therefore, both side evidence reveal that the father of the Defendant could not have given assurance to allot half share in the second floor since he was not the owner of the suit property, but only managing the property belonged to his wife Late Mrs. Kupppammal. Therefore, the above said suspicious circumstance raised by the Defendant is also not correct.

24. The next suspicious circumstance raised by the Defendant is that both the Attesting Witnesses are not relatives and they were close childhood friends of the Plaintiff and the testimony of the Attesting Witness, i.e. PW 2 is unbelievable not reliable and therefore, it creates serious doubt about the genuineness of the Will. On the side of the Plaintiff, has clearly stated at the time of evidence that both PW 2

and another Attesting Witness, namely, Mahadevan are their family friends. According to PW 2's evidence, the testatrix informed the witnesses not to disclose the execution of the Will to anybody till her death. In the above said circumstances, it cannot be suspected the genuineness of the Will on the ground that the Ex. P2-Will was attested by PW 2 and Mahadevan, who were the close childhood friends.

25. In view of the above, the Plaintiff has proved that the above said Ex. P2-Will has been executed by the Testatrix Late Mrs. E. Kuppammal in sound disposing state of mind and also prove the execution of the said Will in the manner known to law by examining the sole Attesting Witnesses available and therefore, the Plaintiff has proved the Will by adducing reliable oral and documentary evidence and also removed all the suspicious circumstances raised by the Defendant. Per contra, the Defendant has not produced any documentary evidence and not examined any witness except self-interested testimony of the Defendant as DW 1 and her son as DW 2 to substantiate her contention raised in the Written Statement. Therefore, Ex. P2 produced by the Plaintiff is genuine and legally enforceable document and the Plaintiff is entitled for grant of probate of the said Will-Ex. P2, executed by Late Mrs. E. Kuppammal on 10.4.1994 and answered these two Issues in favour of the Plaintiff and against the Defendant.

26. Issue No. 2: In view of the findings in respect of Issue Nos. 1 & 3, the Plaintiff is entitled to the relief sought for in the Suit and answered this Issue accordingly. In the result, the Suit is decreed decreed as prayed for in the Suit. No costs. Accordingly, the Registry is directed to issue probate of the Will - Ex. P2 after following the formalities thereof.