2021 INSC 626

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1376-1377 OF 2010

V. PRABHAKARA **…APPELLANT**

VERSUS

BASAVARAJ K. (DEAD) BY LR. & ANR. **…RESPONDENTS**

J U D G M E N T

M.M. SUNDRESH, J.

BACKGROUND FACTS:

1. The Suit Property originally belonged to one Ms. Jessie Jayalakshmi (since deceased). The deceased Ms. Jessie Jayalakshmi, a spinster, was the maternal aunt of the Appellant/Plaintiff. Mr. Vijay Kumar and Ms. Kantha Lakshmi were his brother and sister, respectively. It is the case of the Appellant that the deceased, Ms. Jessie Jayalakshmi adopted him as her son and that he took care of her when she suffered an attack of paralysis.

2. A registered Will under Exhibit P4 was executed by Ms. Jessie Jayalakshmi on 04.09.1985 in favour of the Appellant. The said Will was attested by Mr. Vijay Kumar, brother of the Appellant, who has also been examined as PW2.

Ms. Jessie Jayalakshmi was also brought to the office of the Sub-Registrar by none other than Ms. Kantha Lakshmi.

3. The relationship between Ms. Kantha Lakshmi and her husband, who has been arrayed as Respondent No. 1 got strained. She consequently filed a petition for divorce in MC No. 879 of 1987 before the Family Court of Principal Judge, Bangalore and obtained a divorce decree on 26.03.1988. It is the further case of the Appellant that Respondent No. 1 was permitted to reside in the Suit Property. Respondent No. 2 is the son of Respondent No. 1. As the Respondent No. 1 refused to vacate the Suit Property, which is a residential house, for which the Appellant is stated to have paid all the statutory dues, a suit for declaration and for possession was filed in O.S. No. 51 of 1992 which was decreed on 11.12.2003.

4. The Defendants/Respondents while acknowledging the factum of execution of Exhibit P4, introduced Exhibit D1, an unregistered Will, allegedly executed by Ms. Jessie Jayalakshmi in favour of the Respondent No.2 (minor son of Respondent No.1). It is their case that Exhibit P4 has been replaced by Exhibit D1. Exhibit D1 also speaks of a mortgage in favour of Respondent No.1 on payment of Rs. 31,000/- in favor of deceased, Ms. Jessie Jayalakshmi. Thus, the Respondent did not seriously dispute the execution of Exhibit P4 but set up a plea for the dismissal of the suit by taking umbrage under Exhibit D1 and on

the basis of the alleged mortgage. There was also a denial of the averment of the Appellant regarding permissive occupation. While accepting the decree for divorce it is contended by the 1st Respondent that it has not been given effect to.

5. The Trial Court framed the following issues for consideration:

> "1. Does the Plaintiff prove to have acquired title to the suit property by virtue of the Will 04.09.1985 executed by late Jessie Jayalakshmi?
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> 2. Does he prove that the Will dated 16.08.1996 executed by Jessie Jayalakshmi is fabricated and forged document?
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> 3. Does he prove that the Defendant is in occupation of the schedule property as licensee free of charges?
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> 4. Whether the Plaintiff has the cause of action for the suit?
>
> 5. Is the suit barred by limitation?
>
> 6. What order or decree the parties are entitled to?"

6. The Appellant examined himself as PW1 with his brother as PW2. The second attesting witness was examined as PW3 being an independent one. On behalf of the Respondents, Respondent No.1 examined himself as DW1, with the attesting witness, Manish as DW2.

7. The Trial Court decreed the suit upon satisfying itself that the parameters as required under Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act have been duly complied with in proving Exhibit P4. On Exhibit D1, exhaustive reasoning was rendered for doubting its

genuineness. The reasoning would include the thumb impression, signature, the nature of recitals, the manner in which it was written, and the evidence given by DW2, who did not know anything about the deceased, Ms. Jessie Jayalakshmi, other than being a person known to DW1. It found that the thumb impression in Exhibit D1 was smudged and the scribe of Exhibit D1 has not been examined. Further, the stamp on Exhibit D1 bearing date of 15.08.1986 and bearing the seal of the treasury happened to be issued on Independence Day. We may also note that Exhibit D1 was stated to have been executed on 16.08.1986 while Ms. Jessie Jayalakshmi died on 22.08.1986 i.e., within a week's time.

8. Aggrieved over the same, the Respondents filed an appeal before the High Court invoking Section 96 of the Civil Procedure Code in RFA No. 692 of 2004 which was decided on 20.09.2006.

9. The High Court reaffirmed the findings of the Trial Court with respect to the genuineness of Exhibit D1. However, in the absence of any specific pleading coupled with an admission of the execution of Exhibit P4, the High Court did an exercise by entertaining a suspicion and accordingly found that it has not been dispelled by the Appellant. Findings have been rendered to the effect that there is no logic in the exclusion of the sister of the Appellant and PW2. Incidentally, it has been held that evidence of PW3 would not be sufficient

enough to remove the suspicion surrounding Exhibit P4 and if the deceased Ms. Jessie Jayalakshmi was brought to the office of the Sub-Registrar by Ms. Kantha Lakshmi, there was no basis to leave her out of the Will. On that basis, the suit was dismissed by allowing the appeal.

10. An application for review was filed by the Appellant along with an application for condonation of delay. This application was filed in R.P. 279 of 2007 which was dismissed by the High Court declining to condone the delay on 23.11.2007. The Appellant has filed the present appeals against the aforesaid judgement and decree rendered by the High Court.

11. During the pendency of the pleadings before this Court, Respondent No.1 died. His divorced wife Ms. Kantha Lakshmi also died. Consequently, along with Respondent No.2, a daughter born out of the wedlock (Respondent No. 1(b)) was brought on record as additional legal heir of the deceased Respondent No.1.

ARGUMENTS OF THE APPELLANT:

12. It is argued by the counsel for the Appellant that Exhibit P4 is a registered document. PW2 and 3 have deposed in tune with the said document. The fact that Ms. Kantha Lakshmi accompanied the deceased, Ms. Jessie Jayalakshmi would show that Exhibit P4 has been executed properly. She did not raise any

objection. There was no pleading disputing Exhibit P4. The High court has created its own suspicion. The findings of the Trial Court resulting in decreeing the suit have not been found fault with. Having found Exhibit D1 is a forged and fabricated document, the High Court ought to have affirmed the decree and judgment of the Trial Court.

ARGUMENTS OF THE RESPONDENTS:

13. The question as to whether there exists a suspicious circumstance is one of fact. Hence, it cannot be adjudicated by invoking Article 136 of the Constitution of India. There is no explanation for the exclusion of the brother and sister of the Appellant. Exhibit D1 has been wrongly rejected by the Courts below. What is important is the validity of Exhibit P4. The First Appellate Court has got adequate jurisdiction to satisfy itself on the suspicion surrounding Exhibit P4. Ms. Kiran Suri, the learned Senior Counsel, to buttress her submission placed reliance upon the following judgements:

    A. ***Joseph Antony Lazarus (Dead) by LRs v A.J. Francis,* (2006) 9 SCC 515**
    B. ***Mahesh Kumar (Dead) By LRs v Vinod Kumar & Ors.,* (2012) 4 SCC 387**

CONSIDERATION ON LAW:

Indian Evidence Act, 1872:

14. Section 3 of the Indian Evidence Act defines “a fact”. Conduct of a party would be construed as a fact under Section 8. Such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation.

When evidence is given on the conduct of a party and if it is proved to the satisfaction of the court particularly when it involves an admission, adequate weightage is required to be given. Such a conduct would include a silence emanating from a party who is expected to speak and express. When a party makes a claim based upon revocation of the earlier Will, as indicated in the subsequent one, the said acknowledgement of the former would form part of a conduct leading to a relevant fact vis-à-vis a fact in issue.

15. Section 17 defines “an admission” which would include a statement both oral and documentary. When such an admission is clear and unequivocal, there is no need to prove it while taking judicial notice. Under Section 58, a fact admitted need not be proved unless the court warrants it. Thus, in a case where a party admits the execution of the document in the nature of a Will, which is otherwise proved in accordance with Section 63 and Section 68 of the Indian Succession Act and Indian Evidence Act respectively, it becomes a relevant fact duly proved, in the absence of any discretion by the court. The exercise of discretion is a judicial one and therefore, there must be a basis in asking a party to prove it otherwise.

16. Section 68 speaks of a requirement of proving the execution of a document required by law to be attested. This provision being mandatory as the word employed is “shall”, meaning thereby it shall not be used as evidence unless

one attesting witness at least has been called for to prove its execution. When it comes to proving a Will, Section 68 of the Act is mandatorily to be followed. This provision has to be seen and read along with Section 63 of Indian Succession Act which not only mandates a compulsory attestation but reiterates compliance of section 68 of the Indian Evidence Act.

17. Section 114 facilitates a court to presume existence of certain facts. As the word employed being “may”, it is a rebuttable presumption. Under Section 114(e) there is a presumption of judicial and official acts having been regularly and duly performed.

18. The principle governing estoppel is defined under Section 115 of the Act. When a person by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed to deny the truth of that thing.

REGISTRATION ACT, 1908:

19. Section 17 of the Registration Act deals with documents of which registration is compulsory. A Will being a testamentary document does not find a place under Section 17 which factum is reiterated under Section 18, making such a document to be registered at the option of a party. A Will which is originally not registered may be presented for registration or deposited at any time under

Section 27. Therefore, the registration of a Will is only an additional or attending circumstance in proving it with the rebuttable presumption available under Section 114(e) of the Indian Evidence Act.

CODE OF CIVIL PROCEDURE:

Order VI:

20. Order VI of the Code while defining the word "pleading" makes it applicable on even terms to both a plaint and written statement. Every pleading under Order VI Rule 2 shall contain a statement of material facts on which a party relies either for his claim or defense. Such a pleading should contain the necessary foundation for raising an appropriate issue. Under Order VIII Rule 2 a defendant shall make specific pleadings while under Rule 3 a denial should be specific. Rule 4 prohibits an evasive denial and Rule 5 speaks of consequences of not denying specifically an averment in a plaint leading to presumption of an admission.

A relief can only be on the basis of the pleadings alone. Evidence is also to be based on such pleadings. The only exception would be when the parties know each other's case very well and such a pleading is implicit in an issue. Additionally, a court can take judicial note of a fact when it is so apparent on the face of the record. A useful reference can be made to the following passage in ***Bachhaj Nahar v. Nilima Mandal***, **(2008) 17 SCC 491**:

> "**15.** The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated

by a Constitution Bench of this Court in *Bhagwati Prasad* v. *Chandramaul* [AIR 1966 SC 735]: (AIR p. 738, para 10)

> "*10. … If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial*, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: *did the parties know that the matter in question was involved in the trial, and did they lead evidence about it*? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. *To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.*"
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> (emphasis supplied)

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"**23 [Ed.: Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./89/2009 dated 17-7-2009].** It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

Section 96:

21. The first appellate court while exercising power under Section 96 can re-do the exercise of the trial court. However, such a power is expected to be exercised with caution. The reason being, the trial court alone has the pleasure of seeing the demeanor of the witness. Therefore, it has got its own advantage in assessing the statement of the witnesses which may not be available to the appellate court. In exercising such a power, the appellate court has to keep in mind the views of the trial court. If it finds that the trial court is wrong, its decision should be on the reasoning given. A mere substitution of views, without discussing the findings of the trial court, by the appellate court is not permissible. If two views are possible, it would only be appropriate to go with the view expressed by the trial court. While adopting reasoning in support of its findings, the appellate court is not expected to go on moral grounds alone.

22. The aforesaid views expressed by us are nothing but a reiteration of the settled principle of law as could be seen through the following paragraphs of the decision rendered by this Court in the case of ***Jagdish Singh v. Madhuri Devi,*** **(2008) 10 SCC 497**:

> "27. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re- appreciate and review the entire evidence – oral as well as documentary and can come to its own conclusion.

28. At the same time, however, the appellate court is expected, *nay* bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanor of witnesses and, hence, the trial court's conclusions should not *normally* be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.

29. Before more than a century, in *Coghlan v. Cumberland* [(1898) 1 Ch 704 (CA)] Lindley, M.R. pronounced the principle thus;

> "Even where the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the Judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the Judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions and when the question arises which witness is to be believed rather than another; and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may shew whether a statement is credible or not; and these circumstances may warrant the Court in differing from the Judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen."

(See also observations of Lord Thankerton in Watt v. Thomas, [1947 AC 484])

30. In *Sara Veeraswami v. Talluri Narayya* [AIR 1949 PC 32] the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated (Quoting from *Watt v Thomas*, [(1947) 1 All ER 582, pp.583 H-584 A]):

> "…but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

31. This Court also, before more than half a century in *Sarju Pershad v. Jwaleshwari, Pratap Narain Singh* [AIR 1951 SC 120] stated: (AIR p. 121, para 7)

> "7. The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is and it is nothing more than a rule of practice that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should

not interfere with the finding of the trial Judge on a question of fact."

32. Referring to several cases on the point, the Court concluded: (*Sarju Pershad case*, AIR p. 123, para 15):

> *"15. …The duty of the appellate court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial court arrived at or whether there is an element of improbability arising from proved circumstances which, in the opinion of the court, outweighs such finding."*
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> (emphasis supplied)

33. After about a decade, in *Radha Prasad v. Gajadhar Singh* [AIR 1960 SC 115] this Court reiterated: (AIR p. 123, para 15)

> "14. The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the appeal court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanor of the witness in court. But this does not mean that merely because an appeal court has not heard or seen the witness it will in no case reverse the findings of a trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the appeal court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the trial Judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the trial Judge is wrong, the appeal court should have no hesitation in reversing the findings of the trial Judge on such questions. Where the question is not of credibility based entirely on the demeanor of witnesses observed in court but a question of inference of one fact from proved primary facts the court of appeal is in as good a position as the trial Judge and is free to reverse the findings if it thinks that the inference made by the trial Judge is not justified."

34. In *T.D. Gopalan v. Commissioner of Hindu Religious & Charitable Endowments* [(1972) 2 SCC 329], this Court said: (SCC p. 333, para 9):

> "9. The High Court next proceeded to reproduce a summary of the statement of each of the witnesses produced by the defendants. No attempt whatsoever was made to discuss the reasons which the learned District Judge had given for not accepting their evidence except for a general observation here and there that nothing had been suggested in the cross-examination of a particular witness as to why he should have made a false statement. We apprehend that the uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court. We are, therefore, not in a position to know on what grounds the High Court disagreed with the reasons which prevailed with the learned District Judge for not relying on the evidence of the witnesses produced by the defendants."

35. Yet in another decision in *Madhusudan Das v. Narayanibai* [(1983) 1 SCC 35], this Court said: (SCC pp. 39-40, para 8):

> "8. …At this stage, it would be right to refer to the general principle that, in an appeal against a trial court decree, when the appellate court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. …The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. *There is, of course, no doubt that as*

> *a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact.*"
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> (emphasis supplied)
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> 36. Three requisites should normally be present before an appellate court reverses a finding of the trial court:
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> (i) it applies its mind to reasons given by the trial court;
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> (ii) it has no advantage of seeing and hearing the witnesses; and
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> (iii) it records cogent and convincing reasons for disagreeing with the trial court.
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> 37. If the above principles are kept in mind, in our judgment, the decision of the High Court falls short of the grounds which would allow the first appellate court to reverse a finding of fact recorded by the trial court. As already adverted earlier, the High Court has 'virtually' reached a conclusion without recording reasons in support of such conclusion. When the court of original jurisdiction has considered oral evidence and recorded findings after seeing the demeanour of witnesses and having applied its mind, the appellate court is enjoined to keep that fact in mind. It has to deal with the reasons recorded and conclusions arrived at by the trial court. Thereafter, it is certainly open to the appellate court to come to its own conclusion if it finds that the reasons which weighed with the trial court or conclusions arrived at were not in consonance with law."

23. Thus, we have no hesitation in holding that though the first appellate court is the final court of fact and law, it has to fall in line with the scope and ambit of Section 96 of the Code.

TESTAMENTARY COURT:

24. A testamentary court is not a court of suspicion but that of conscience. It has to consider the relevant materials instead of adopting an ethical reasoning. A mere exclusion of either brother or sister *per se* would not create a suspicion unless it is surrounded by other circumstances creating an inference. In a case where a testatrix is accompanied by the sister of the beneficiary of the Will and the said document is attested by the brother, there is no room for any suspicion when both of them have not raised any issue.

ON FACTS

25. The Appellant has duly complied with the mandate of Section 63 of the Indian Succession Act along with Section 68 of the Indian Evidence Act. PW2 being the brother of the Appellant and the other sister, Ms. Kantha Lakshmi were present at the time of execution of Exhibit P4. They have not raised any demur. Both the Courts found that Exhibit D1 is a forged and fabricated document. The alleged mortgage in favor of Respondent No.1 has not been proved. The Appellate Court, in our considered view, has unnecessarily created a suspicion when there is none. The Respondents have not denied the factum of the execution of Exhibit P4. The very fact that they made reliance upon Exhibit D1, which took note of Exhibit P4 as validly done, there is no need for any suspicion on the part of the High Court. That too, when the Trial Court did not find any. Such a suspicion, as stated earlier, did not arise from

either of the siblings of the Appellant who would otherwise be entitled to a share in the Suit Property. Their exclusion will not enure to the benefit of the Defendants who are bound by the recitals under Exhibit D1 and averments made in their written statement.

26. The High Court has also committed an error in misconstruing the presence of the sister of the Appellant, Ms. Kantha Lakshmi. Her presence in fact adds strength to Exhibit P4 having been executed properly. It is the specific case of the Appellant, and perhaps PW2 and Ms. Kantha Lakshmi that the deceased, Ms. Jessie Jayalakshmi wanted the property to be given in his favor. Their participation coupled with the subsequent conduct would be sufficient enough to uphold Exhibit P4. When there are no suspicious circumstances surrounding the execution of Exhibit P4, there is no need to remove.

27. Both the Courts have given adequate reasoning for not believing Exhibit D1. In the absence of pleadings to the contrary, followed by issues framed, it is not open to the Appellate Court to embark upon an exercise which is not required and also not permitted under the law. We have already held that the High Court did not give any reasoning whatsoever for differing with the views expressed by the Trial Court.

28. The decisions relied upon by the learned Senior Counsel appearing for the Respondents do not have any application to the case we are dealing with. It may be correct to state that the existence of suspicious circumstances is one of fact. However, the approach of the Court being contrary to law, we have no hesitation in holding that the judgment and decree of the Appellate Court requires to be interfered with. As stated, due execution of Exhibit P4 is accepted as against Exhibit D1. Exhibit P4 also cannot be questioned by the Respondent No. 1 who is none other than the erstwhile brother-in-law of the Appellant. Respondent No. 1 & 2 merely rely upon Exhibit D1 which is rightly found to be not genuine by both the Courts. We feel that the Appellate Court has not considered the relevant materials and substituted its own views when not warranted either on facts or law.

29. The High Court after giving adequate reasoning for disbelieving Exhibit D1 that it is forged and fabricated should have kept in mind the conduct and attitude of the Respondent No.1. The factors such as the fabrication and severance of relationship between himself and his wife in pursuance of the decree for divorce, coupled with the status while squatting over the Suit Property being the relevant materials, ought to have weighed in its mind instead of questioning Exhibit P4. Had that been done, perhaps it would have come to conclusion that such an exercise is not warranted at the hands of the

Respondents, who not only accepted Exhibit P4 but it did not even question it; except by contending that it is replaced by Exhibit D1.

30. For the reasons aforesaid, we have no hesitation in holding that the judgment and decree of the Appellate Court rendered in RFA No. 692 of 2004 as confirmed in R.P. No.279 of 2007 is required to be set aside. Accordingly, they are set aside and consequently the appeals stand allowed by restoring the Judgment and Decree of the Trial Court in O.S. No. 51 of 1992. No costs.

…….……J.
(SANJAY KISHAN KAUL)

……J.
(M.M. SUNDRESH)

New Delhi
October 07, 2021