APHC010592532016

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

MONDAY,THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 494/2016

Between:

S Annapoorna, Died and Others **...APPELLANT(S)**

AND

S Satyanarayana Murthy E Godavari Dist 5 Others and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. M N NARASIMHA REDDY
2. A SYAM SUNDAR REDDY

Counsel for the Respondent(S):

1. KIRTHI TEJA KONDAVEETI

The Court made the following:

Reserved on 08.05.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.494 of 2016

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved by the judgment and decree, dated 14.09.2015, in A.S.No.94 of 2006, on the file of the III Additional District Judge, East Godavari District at Kakinada, reversing the judgment and decree, dated 16.02.2006, in O.S.No.59 of 2000, on the file of the II Additional Senior Civil Judge, Kakinada.

2. The plaintiffs initiated action in O.S.No.59 of 2000, on the file of the II Additional Senior Civil Judge, Kakinada, with a prayer for declaration of title over the plaint schedule property and subsequent possession and for damages.

3. The learned II Additional Senior Civil Judge, Kakinada, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiffs in the above said suit filed the aforesaid appeal before the First Appellate Court. The learned III Additional District Judge, East Godavari District at Kakinada, allowed the appeal with costs by reversing the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the defendants in O.S.No.59 of 2000 approached this Court by way of second appeal.

4. The appellants herein are the defendants and the respondents herein are the plaintiffs in O.S.No.59 of 2000. During the pendency of the second

appeal, appellant No.6 herein died and appellant No.11 was brought on record as the legal representatives of the deceased appellant No.6.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in O.S.No.59 of 2000 before the trial Court.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.59 of 2000, is as follows:

I. The plaintiff Nos.1 to 4 are the sons of late Saladi Hanumantha Rao, plaintiff No.5 is the daughter of late Saladi Hanumantha Rao, and plaintiff No.6 is the wife of late Saladi Hanumantha Rao. The plaintiffs further pleaded that late Saladi Hanumantha Rao was the natural brother of Smt. Pamarthi Subbayamma, who is the wife of late Pamarthi Venkataswamy of Satyavada Village. The plaintiffs further pleaded that the said Subbayamma purchased the site over which the plaint schedule house stands under a registered sale deed dated 14.02.1962 and constructed the plaint schedule house with her own funds from the savings derived out of the agricultural produce from the lands given to her by her father, late Saladi Subbarao, and, therefore, the plaint schedule house is her absolute self-acquired property. The plaintiffs further pleaded that the defendant No.1 is the wife of late Gangaraju, who was the brother of late Subbayamma and the defendant Nos.2 to 5 are the sons of the defendant No.1 and late Gangaraju, The plaintiffs further pleaded that defendant No.6 is the wife of late Parthasaradhi

and the defendant Nos.7 and 8 are the sons of the defendant No.6 and late Parthasaradhi, while defendant Nos.9 to 11 are their daughters.

II. The plaintiffs further pleaded that late Pamarthi Subbayamma executed a registered Will dated 31.08.1990 while in a sound and disposing state of mind, bequeathing the plaint schedule property in favour of her younger brother, namely, Saladi Hanumantha Rao, who is the father of plaintiff Nos.1 to 5 and being the legal heirs of late Hanumantha Rao, the plaintiffs are entitled to succeed to his estate. The plaintiffs further pleaded that late Hanumantha Rao died on 07.08.1994 and, consequently, the plaintiffs succeeded to the plaint schedule property devolving upon him under the registered Will executed by late Subbayamma. The plaintiffs further pleaded that during his lifetime, late Hanumantha Rao got issued a registered legal notice dated 08.12.1993, to which Saladi Parthasaradhi and Saladi Panduranga Rao issued reply notices dated 31.01.1994 and 08.02.1994 containing false and concocted allegations, including a claim that late Subbayamma had executed an unregistered Will dated 29.12.1991 in their favour. The plaintiffs further pleaded that late Hanumantha Rao thereafter got issued a rejoinder notice dated 26.02.1994 specifically contending that the alleged unregistered Will dated 29.12.1991 is a rank forgery and fabricated document. The plaintiffs further pleaded that after the death of her husband, late Pamarthi Venkataswamy, Subbayamma never left Satyavada Village except on three occasions, namely, for registration of

the Will dated 31.08.1990 and for execution of settlement deeds dated 23.04.1990 and 24.04.1990 at Draksharama.

III. The plaintiffs further contended that late Subbayamma was never on cordial terms with the defendants and was not even visiting their house after the death of her husband. The plaintiffs further pleaded that late Parthasaradhi and Panduranga Rao were only in permissive occupation of the plaint schedule property and Saladi Parthasaradhi was the brother of late Subbayamma and late Hanumantha Rao and that Panduranga Rao, being the son of late Gangaraju, another younger brother of late Subbayamma, was also permitted to occupy the plaint schedule premises. The plaintiffs further pleaded that after construction of the house at Kakinada, late Hanumantha Rao, plaintiff No.6, plaintiff Nos.1 to 5, and late Subbayamma used to reside together in the plaint schedule property. Hence the suit.

7. The case of the defendants, in brief is as follows:

I. The defendants pleaded that the suit schedule site was purchased out of the contributions made by late Saladi Gangaraju and late Saladi Parthasaradhi with an intention to provide residential accommodation for themselves, as Saladi Parthasaradhi was practicing as an advocate at Kakinada and Saladi Gangaraju was employed in the Revenue Department. The defendants further pleaded that though the sale deed was obtained in the name of Pamarthi Subbayamma, the same was done only because she was the elder member of the family and had

fostered and looked after the family members. The defendants further pleaded that the house in the suit schedule property was constructed with the funds contributed by late Saladi Gangaraju and late Saladi Parthasaradhi and the front portion of the house was allotted to Saladi Parthasaradhi, who also established his legal office therein, while the rear portion was allotted to Saladi Gangaraju.

II. The defendants further contended that Pamarthi Subbayamma executed a Will dated 18.04.1983, which was attested by her husband, Pamarthi Venkataswamy, and subsequently registered on 06.09.1986. The said Will was marked as Ex.B-2 and under the said Will, Pamarthi Subbayamma allegedly bequeathed the suit schedule property in favour of Saladi Gangaraju and Saladi Parthasaradhi. The defendants further pleaded that thereafter Pamarthi Subbayamma executed another unregistered Will dated 29.12.1991, marked as Ex.B-1, whereby she bequeathed the share of Saladi Gangaraju in favour of his wife and created vested remainder rights in favour of his sons. As such, the defendants prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

1) Whether the plaintiffs are entitled for declaration and recovery of possession as prayed for and whether the Will dated 31.08.1990 is true and correct?

2) Whether the plaintiffs are entitled for damage of Rs.2,000/- p.m., from the defendants for use and occupation of the suit schedule property as prayed for?
3) Whether this Court has no jurisdiction to try this suit?
4) Whether the Court fees paid is not correct?
5) Whether the Will dated 29.12.1991 is true and correct?
6) Whether Pardhasaradhi and Gangaraju perfected their title by adverse possession over the schedule property? and
7) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A-1 to A-20 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-12 were marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.94 of 2006, on the file of the III Additional District Judge, East Godavari District at Kakinada, wherein the following points came up for consideration:

1) Whether the appellants/plaintiffs are entitled for declaration of title and subsequent possession and damages as prayed for?

2) Whether the impugned Decree and Judgment is sustainable in the facts and law?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendants and allowed the appeal with costs by reversing the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendants in O.S.No.59 of 2000 filed the present second appeal before this Court.

12. On hearing both sides' counsel at the time of admission of the second appeal on 29.08.2025, this Court admitted the second appeal and framed the following substantial questions of law:

1) Whether the judgment of the lower appellate Court is vitiated in ignoring to consider Ex.B2 registered Will executed by Subbayamma and one of the attestor of husband of Subbayamma?
2) Whether the judgment of the lower appellate Court is vitiated since the respondents failed to remove the suspicious circumstances surrounded Ex.A2?
3) Whether the judgment of the lower appellate Court is vitiated in not considering the recital in Ex.B2 registered Will?

13. Heard Sri O.Manohar Reddy, learned Senior Counsel, representing Sri A.Syam Sundar Reddy, learned counsel for the appellants and Sri Kirthi Teja Kondveeti, learned counsel for the respondents.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***[1], the Apex Court held as follows:

> "The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***[2]**,** the Apex Court held as follows:

> *"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

15. The undisputed facts are that the plaintiff Nos.1 to 5 are the children of late Hanumantha Rao and the plaintiff No.6 is the wife of the said late Hanumantha Rao, who was the natural brother of Pamarthi Subbayamma, and the plaint schedule property is the house property belonging to Pamarthi Subbayamma. The case of the plaintiffs is that Subbayamma executed a registered Will on 31.08.1990, in favour of Hanumantha Rao bequeathing the plaint schedule property and later Subbayamma died intestate. The plaintiffs

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[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

pleaded that subsequent to the death of Subbayamma, Hanumantha Rao died intestate, and the plaintiff Nos.1 to 5, being the sons of Hanumantha Rao, and the plaintiff No.6, being the wife of Hanumantha Rao, are having right in the plaint schedule property. The case of the plaintiffs is that Subbayamma, during her lifetime, executed a registered Will bequeathing the plaint schedule property in favour of Hanumantha Rao, and Subbayamma died on 24.10.1993, and thereafter, Hanumantha Rao got absolute rights in the plaint schedule property by virtue of a registered Will, i.e., the last testament executed by Subbayamma, and after the death of Hanumantha Rao, the plaintiffs are having absolute rights in the plaint schedule property, and Hanumantha Rao got issued a legal notice dated 08.12.1993, to which Pardhasaradhi and Pandurangarao issued reply notices dated 31.01.1994 and 08.02.1991 contending that the Ex.A-2 registered Will is a rank forged one and that Subbayamma executed an unregistered Will on 29.12.1991, by cancelling the earlier Wills, bequeathing the southern side of the plaint schedule property in favour of her brother Pardhasaradhi and bequeathing the northern portion of the house in favour of Annapurnamma, wife of late Gangaraju, while retaining life interest, and after her death, her male children have to enjoy the same.

16. The plaintiffs relied on Ex.A-2 registered Will dated 31.08.1990, whereas the defendants relied on Ex.B-1 unregistered Will dated 29.12.1991. The claim of the plaintiffs is based on Ex.A-2 registered Will dated 31.08.1990. The claim of the defendants is based on Ex.B-1 unregistered Will dated

29.12.1991, and Subbayamma died on 24.10.1993. The present suit is filed by the plaintiff seeking the relief of declaration of right and title in favour of the plaintiffs and also possession of the plaint schedule property. The very case of the plaintiffs is that during the lifetime of Hanumantha Rao, he got issued a legal notice to Pardhasaradhi and Pandurangarao on 08.12.1993, Ex.A-4, by informing about the execution of Ex.A-2, registered Will dated 31.05.1990 by Subbayamma and demanded them to deliver the vacant portion of the plaint schedule property. The defendants contended in the reply notice dated 31.01.1994 under Ex.A-5 and dated 18.02.1994 under Ex.A-6 by informing about the execution of the unregistered Will dated 29.12.1991.

17. The contention of the appellants herein is that the respondents/plaintiffs failed to prove Ex.A-2 Will dated 31.08.1990 and that the defendants are having absolute rights in the plaint schedule property by virtue of Ex.B-1 unregistered Will deed dated 29.12.1991. The contention of the respondents is that Ex.B-1 unregistered Will is a fabricated one and that Ex.B-1 was surrounded by several suspicious circumstances. The defendants relied on the evidence of D.W.1, who is none other than the defendant No.2. D.W.2 is one of the attestors to Ex.B-1 unregistered disputed Will. D.W.3 is the scribe of Ex.B-1 and D.W.4 is one of the attestors to Ex.B-2 Will deed dated 18.04.1993. His evidence is in no way connected to prove the recitals in Ex.B-1, because the defendants are contending that by cancelling earlier Ex.B-2 Will, Subbayamma executed an unregistered Will under Ex.B-1 dated 09.12.1991.

18. D.W.2 is the attestor to Ex.B-1 Will. As per the evidence of D.W.2, on 27.12.1991, he attended the marriage function of his relations at Kakinada, and at that time Smt. Pamarthi Subbayamma met him and requested him to assist her in executing a Will and told him that she is staying with her brother Pardhasaradhi behind the Collector's Office and asked him to meet her there in the morning of 29.12.1991. As per his evidence, Ex.B-1 Will was executed at the house of Pardhasaradhi, and he further contended that at the time of giving instructions to the scribe of Ex.B-1 Will, Subbarao, i.e., D.W.1, was present at the time of execution of Ex.B-1 Will.

19. It is the admitted case of the defendants that Ex.B-1 unregistered Will was executed at the house of Pardhasaradhi, who is one of the beneficiaries under alleged Ex.B-1, in the presence of Pardhasaradhi and D.W.1. As noted supra, D.W.1’s family and Pardhasaradhi are the beneficiaries under Ex.B-1. The date of alleged unregistered Ex.B-1 Will is 29.12.1991. As per the evidence of D.W.2, the Will was executed at the house of Pardhasaradhi and at that time, Pardhasaradhi and D.W.1 were present. It is evident that Subbayamma filed O.S.No.72 of 1990 against Saladi Subbarao viz. D.W.1 and others, and D.W.1 also filed O.S.No.34 of 1990 against Subbayamma. D.W.1 is the son of Gangaraju, who is one of the legatees under Ex.B-1 Will. Therefore, it is evident that there are disputes between Subbayamma and the branch of Gangaraju from 1990 till the date of death of Subbayamma. Therefore, the very execution of Ex.B-1 unregistered Will in favour of the branch of Ganga Raju on 29.12.1991 is highly doubtful.

20. D.W.1/defendant No.2 admitted in his evidence in cross-examination that he and Subbayamma were not in good terms after filing of the suit in O.S.No.134 of 1990, and he further admits that Subbayamma died during the pendency of the suit O.S.No.134 of 1990. He further admits that Subbayamma died during the pendency of the suit in O.S.No.72 of 1990 and Hanumantha Rao and the plaintiff Nos.1 to 5 herein filed a legal representatives' application in the said suit, based on Ex.A-2 Will herein. D.W.1 filed a counter in the said legal representatives' application under Ex.A-20, and the said counter was filed on 27.09.1994. The alleged Ex.B-1 unregistered Will dated 29.12.1991 is not at all referred to in the counter dated 27.09.1994 filed in the earlier suit proceedings in O.S.No.72 of 1990. Therefore, the same is also one of the strong suspicious circumstances to doubt the Ex.B-1 alleged unregistered Will. Furthermore, in view of the aforesaid circumstances, since there are disputes between the defendants' family and Subbayamma, by the date of alleged Ex.B-2 Will, the very execution of alleged Ex.B-1 unregistered Will dated 29.12.1991 is highly doubtful. Furthermore, D.W.2 is a relative of Pardhasaradhi and there is evidence on record to show that there were no talking terms between Pardhasaradhi and Subbayamma from the year 1990 till the death of Subbayamma in the year 1993. Therefore, the very execution of Ex.B-1 Will in the year 1991 in favour of their enemies by Subbayamma is highly doubtful and cannot be considered. Even as per the own admissions of D.W.1, Subbayamma lived in the house of Hanumantha Rao, i.e., the father of the plaintiff Nos.1 to 5, till the date of her death, i.e., on 24.10.1993. There is

material on record to show that Hanumantha Rao, i.e., the father of the plaintiff Nos.1 to 5, attended the funerals of Subbayamma and he performed all the funeral ceremonies of Subbayamma and the defendants' branch did not even attend the same. For the aforesaid reasons, the very execution of Ex.B-1 alleged unregistered Will dated 29.12.1991 is highly doubtful and unbelievable.

21. The learned counsel for the appellant would contend that Ex.B-1 unregistered Will is proved in accordance with law and that the defendants examined one of the attestors to Ex.B-1 unregistered Will as D.W.2. As stated supra, there are several suspicious circumstances surrounding the execution of alleged Ex.B-1 Will. It is the admitted case of D.W.2 that he is a relative of the beneficiary of Ex.B-1 Will. The defendants failed to examine another attestor to the alleged Ex.B-1 Will, though the scribe of the alleged Ex.B-1 Will was examined as D.W.3. "*The evidence of the scribe cannot be equated with the evidence of an attestor.*"

22. In a case of ***Lalitaben Jayantilal Popat Vs. Pragnaben Jamnadas Kantara***[3]**,** the Hon'ble Apex Court held as follows:

> *"Whether a Will is surrounded by suspicious circumstances or not is essentially a question of fact. It is a trite law that execution of a Will must be held to have been proved not only when the statutory requirements for proving the Will are satisfied but the Will is also found to be ordinarily free from suspicious circumstances. When such evidences are brought on record, the Court may take aid of the presumptive evidences also."*

[3] **(2008) 15 Supreme Court Cases 365**

23. In the case at hand, there are several suspicious circumstances appearing on the face of alleged Ex.B-1 unregistered Will. It is well settled that *"suspicious circumstances must be real, germane and valid and not merely the fantasy of the doubting mind; whether a particular feature would qualify as suspicious would depend on the facts and circumstances of each case*." Admittedly, in the case at hand, there is ample evidence on record to show that there are civil suits between the defendants' branch and the testatrix from 1990 onwards till the death of the testatrix, i.e., on 24.10.1993, and by the date of death of the testatrix, she was in the house of the father of the plaintiff Nos.1 to 5, Hanumantha Rao, and the plaintiffs Nos.1 to 5 herein and their father filed a legal representative application in a suit filed by Subbayamma in the year 1993, based on Ex.A-2 registered Will in the suit proceedings in O.S.No.72 of 1990. The testatrix in O.S.No.72 of 1990 and D.W.1 herein are also parties to the said suit, and D.W.1 filed a counter in the said legal representative application on 27.09.1994. In the said counter, Ex.B-1 unregistered Will of the year 1991, in favour of the defendants' branch, is not even referred to by D.W.1 in the counter itself that is also one of suspicious circumstance to doubt the Ex.B-1 unregistered Will.

24. In a case of ***Rani Purnima Devi And Another vs Kumar Khagendra Narayan Dev And Another***[4], a Four Judge Bench of the Hon'ble Apex Court held and as follows:

[4] **AIR 1962 SUPREME COURT 567**

> *"There is no doubt that 'if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will."*

25. In a case of ***H.Venkatachala Iyengar Appellant Vs. B.N.Thimmajamma and others Respondents[5],*** the Hon'ble Apex Court held as follows:

> *"It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties."*

As noticed supra, there are several suspicious circumstances surrounding Ex.B-1 alleged unregistered Will dated 29.12.1991. The defendants relied on the evidence of D.W.1. D.W.1 is the beneficiary under the alleged disputed unregistered Will under Ex.B-1. D.W.2 is one of the attestors to Ex.B-1 Will. D.W.2 admits that he is a close relative of the

[5] **AIR 1959 SUPREME COURT 443**

beneficiary of the Ex.B-1 Will. Therefore, in view of the several suspicious circumstances surrounding the execution of Ex.B-1, the evidence of D.W.2, who is a relative to one of the beneficiaries under the Ex.B-1 alleged unregistered Will, cannot be taken into consideration. As noticed supra, D.W.3 is the scribe of the disputed Ex.B-1 Will and the evidence of the scribe cannot be equated with the evidence of an attestor. The defendants failed to examine another attestor to the alleged unregistered Ex.B-1 Will. For the aforesaid reasons, this Court is of the considered view that Ex.B-1 alleged Will is not at all proved in accordance with law by the appellants.

26. The plaintiffs relied on Ex.A-2 registered Will dated 31.08.1990. To prove Ex.A-2 Will, the plaintiffs relied on the evidence of the attestors to Ex.A-2 Will and the plaintiffs examined them as P.W.2 and P.W.3. P.W.2 is the 2nd attestor and the 1st identifying witness to Ex.A-2 Will and P.W.3 is the 1st attestor and 2nd identifying witness before the Sub-Registrar to Ex.A-2 Will. P.W.2 narrated in his evidence about the execution of Ex.A-2 Will. The learned counsel for the appellants would contend that P.W.2 is the son of the beneficiary and also the plaintiff No.1 herein and that his evidence cannot be taken into consideration.

27. P.W.3 is another attestor to Ex.A-2 registered Will. As per his evidence, Pamarthi Venkataswamy was having his own house at Satyavada and he also had landed properties in the surrounding villages of Satyavada and on the demise of her husband, Smt. Subbayamma came down to the house of Hanumantha Rao and she lived there till her death, and she died in the year

1993, and Subbayamma never attended any function after the demise of her husband Venkataswamy. He further deposed that Subbayamma, even during the lifetime of her husband, sold some landed property to them and she delivered the possession of the property at the time of their purchase and he purchased it in the name of his wife Mangadevi in the year 1984, and Smt. Subbayamma also executed a registered agreement of sale in favour of his wife at the time of purchase of the property, and she is a signatory. He further admits that the registration of the sale deed took place when Subbayamma came down to the house of Hanumantha Rao and on the demise of her husband, i.e., about six years later, on the date of execution of sale deed in the name of his wife, Subbayamma executed two (02) other documents and got them registered and all the said documents were registered at a time and Ex.A-2 Will was also registered on the same day and he also acted as an attestor to the said Will. He further deposed that by the time of execution of Ex.A-2 Will, Subbayamma was hale and healthy and she executed the Will voluntarily in a sound and disposing state of mind and the scribe of the said Will was Palepu Rama Rao and he died about two years ago. He further deposed that after drafting the Will by the scribe, it was read over to Subbayamma and she admitted the contents and after that she affixed her thumb mark with the help of the scribe. He further admits that even though she is a signatory, due to old age, she could not sign and that she affixed her thumb mark on the sale deed and on the other two documents including the registered Will executed by Subbayamma. It is not the case of P.W.3 that he

is a close relative of the beneficiary under Ex.A-2 Will. The evidence of P.W.3, who is one of the attestors to Ex.A-2 Will, proves the execution of Ex.A-2 Will and another important circumstance to believe Ex.A-2 Will is that there are no suspicious circumstances surrounding the Ex.A-2 Will.

28. It is in the evidence of P.W.2 that the entire funeral functions of Subbayamma were attended by his father Hanumantha Rao and the defendants and their family did not attend the funeral functions of Subbayamma. No suggestion was given by the defendants in cross-examination to P.W.2 to deny the same. Moreover, it was admitted by D.W.1 that he deposed in earlier suit proceedings in O.S.No.72 of 1990, which were between Subbayamma and defendants and their family members, that Subbayamma stayed with Hanumantha Rao till her death. D.W.1 further admits that Subbayamma died during the pendency of O.S.No.72 of 1990 and that Hanumantha Rao and his sons, i.e., the plaintiff Nos.1 to 5 herein, filed a legal representative application on the basis of Ex.A-2 Will herein.

29. It was contended by the learned counsel for the appellants that Subbayamma was a signatory, but in the Will Ex.A-2 she affixed her thumb mark, which raised a suspicion on the execution of Ex.A-2 Will. The plaintiffs placed Ex.A-17 and Ex.A-18 registered documents along with Ex.A-2, and in the same year, the Ex.A-17 and Ex.A-18 documents were also registered, which contained the thumb mark of Subbayamma. Moreover, Subbayamma also filed suits against the defendants' family members in the year 1990, wherein in the plaint she affixed her thumb mark only. The plaintiffs also

placed Ex.A-10 and Ex.A-16 served suit summons in the said suit, those are public documents, wherein Subbayamma affixed her thumb mark only in all the aforesaid documents. The above circumstances go to show that due to her old age, Subbayamma affixed her thumb mark instead of her signature on the Will deed dated 31.08.1990.

30. In a case of ***M.Chandraiah and another Vs. C.Narayana and another***[6]**,** the Composite High Court of Andhra Pradesh at Hyderabad held as follows:

> *"**4**. It is well known that Pahanis are public documents within the meaning of Section 74 of the Evidence Act. Certified copies of public documents can be obtained in view of Section 76 of the Evidence Act. Question of proving a public document by examining the person who issued it does not arise in view of Section 77 of the Evidence Act, which lays down that certified copies of public documents can be produced in proof of the contents of a public document. It would have been a different case if the genuineness of Ex. A-7 is disputed and if it is stated that Ex. A.7 in fact was not issued by the office of the Tahsildar cum Deputy Collector, Quthubullapur, or that it is a forged document. When the genuineness of Ex. A-7 is not questioned, question of proving Ex. A-7 by calling the person who issued it by examining him as a witness does not arise. Time of that public servant need not be wasted by summoning him to Court for proving Ex. A-7, which does not require any further proof."*

31. In a case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and another***[7]**,** the Hon'ble Apex Court held as follows:

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[6] **AIR 2003 SUPREME COURT 4548**
[7] **AIR 2003 SUPREME COURT 4548**

> *"**19**. Order 13 Rule 4 of the C.P.C., provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced."*

In the present case, at the time of marking of Ex.A-10 and Ex.A-16, no objection was raised by the defendants before the trial Court. Therefore, they cannot contend that Ex.A-10 and Ex.A-16 are inadmissible documents. The aforesaid documents from 1990 to 1993 reveal that Subbayamma used to affix her thumb impression only due to her old age at that relevant point of time.

32. The learned counsel for the appellants placed a case law in ***Bharpur Singh and Others Vs. Shamsher Singh[8],*** wherein the Hon'ble Apex Court held as follows:

> *"It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with.* In terms of Section 63(c), Succession Act, 1925 and Section 68, Indian Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator.
>
> The fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. The propounder of will must prove: *(i) that the Will was*

[8] **(2009) 3 Supreme Court Cases 687**

signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder."

33. The learned counsel for the appellants placed a case law in ***Leela and Others Vs. Muruganatham and Others***[9]***,*** wherein the Hon'ble Apex Court held as follows:

"Though in normal circumstances there was no necessity to examine the scribe and the non-examination of the scribe cannot be a suspicious circumstance, it was taken note of by the courts in the circumstances explained above."

34. The learned counsel for the appellants placed a case law in ***Meena Pradhan and Others Vs. Kamla Pradhan and Another***[10]***,*** wherein the Hon'ble Apex Court held as follows:

*"**10.11** Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc."*

[9] **(2025) 4 Supreme Court Cases 289**
[10] **(2023) 9 Supreme Court Cases 734**

35. The learned counsel for the appellants placed a case law in ***Smt. Jaswant Kaur Vs. Amrit Kaur and Others***[11]**,** wherein the Hon'ble Apex Court held as follows:

> *"In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."*

36. The law is well settled that "*the onus probandi lies in every case upon the party propounding a Will and he must satisfy the consciousness of the Court that the instrument so propounded is the last Will of a free and capable testator*." It is also well settled that "*where one attesting witness is examined to prove the Will under Section 68 of the Indian Evidence Act and fails to prove the due execution of the Will, then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the Will by the other witness, there will be a deficiency in meeting the mandatory requirements of Section 68 of the Indian Evidence Act."* In the case at hand, the two (02) attestors to Ex.A-2 registered Will were examined as P.W.2 and P.W.3. The learned counsel for the appellant has taken an objection that P.W.2 is one of the beneficiaries under Ex.A-2 Will,

[11] **(1977) 1 Supreme Court Cases 369**

therefore, his evidence cannot be taken into consideration. However, the evidence of P.W.3 clearly goes to show that he was present at the time of execution of Ex.A-2 Will and that the scribe read over the contents of the Ex.A-2 Will to the testatrix and the testatrix admitted the same and after admitting the same, the testatrix affixed her thumb mark on the Ex.A-2 Will and the evidence of P.W.3 is inspiring confidence to prove that Ex.A-2 Will is the last testament of the testatrix. It is undisputed that the scribe of Ex.A-2 Will had expired. The law is well settled that "*the scribe cannot be equated with the evidence of an attestor",* and the two attestors to Ex.A-2 Will deed were examined as P.W.2 and P.W.3. In this case, though P.W.2 is a beneficiary under Ex.A-2 Will, the evidence of P.W.3 is inspiring confidence to prove the recitals in Ex.A-2 and there are no suspicious circumstances around the Ex.A-2 registered Will.

37. The learned counsel for the appellant would contend that Ex.B-2 Will deed dated 18.04.1983, is admitted by both the parties and attested by the husband of the testatrix and in the absence of clear and categorical revocation of the said Will in the subsequent registered Will namely Ex.A-2. Ex.A-2 cannot be considered as a valid one. No doubt, there is no mention in Ex.A-2 that the earlier Will shall stand cancelled, moreover, it is not mandatory that every Will shall contain the clear recital that earlier Wills, if any, shall stand cancelled. In the instant case, the defendants are relying on Ex.B-1 unregistered Will dated 29.12.1991. As stated supra, there are several suspicious circumstances surrounding Ex.B-1 unregistered Will and Ex.B-1

unregistered alleged Will dated 29.12.1991, is doubtful and not validly proved by the defendants. The plaintiffs are relying on Ex.A-2 registered Will deed which is the last Will. As stated supra, the plaintiffs are relying on Ex.A-2 registered Will which is the last testament of the testatrix and there are no suspicious circumstances surrounding Ex.A-2 Will. Therefore, the last Will of Subbayamma, i.e., Ex.A-2 Will, has to be taken into consideration.

38. As noticed supra, this Court came to the conclusion that the Ex.B-1 Will is not proved. Since Ex.B-1 Will is not proved, Ex.A-2 registered Will dated 31.08.1990, which is the last testament of Subbayamma, has to be taken into consideration. Under law, the latest Will prevails over the old Wills and Ex.A-2 herein is the last testament of Subbayamma. Moreover, the appearance of the testatrix before the Sub-Registrar on 31.08.1990 cannot be doubted and the presence of the executant before the Sub-Registrar can be favourably presumed unless some material is placed by the other side to disprove Ex.A-2 Will. Though the appellant pleaded that the testatrix is a signatory, Ex.A-2 contains only the thumb mark, and the same cannot be taken into consideration. The plaintiffs explained that though Subbayamma is a signatory, due to her old age she affixed her thumb mark and to substantiate the same the plaintiffs placed the registered documents of the relevant period, i.e., Ex.A-18 and also the plaint in O.S.No.72 of 1990 and the served suit summons in O.S.No.34 of 1990, wherein Subbayamma affixed her thumb mark only instead of her signature. The documents produced by the plaintiffs support their claim that Subbayamma used to affix her thumb impression at

that relevant period of time. Even as per the own admissions of D.W.2, the testatrix stayed in the house of Hanumantha Rao and died at the house of Hanumantha Rao. There are no suspicious circumstances surrounding the execution of Ex.A-2. Though P.W.2, who is one of the attestor, is a party to the suit, the evidence of P.W.3, who is another attestor, proves about the genuineness of the Will and Ex.A-2 registered Will is the last testament of Subbayamma. As per Ex.A-2 last Will executed by Subbayamma, the plaintiffs being the legal representatives of Hanumantha Rao are having absolute rights over the plaint schedule property.

39. The appellants have taken three (03) inconsistent pleas to prove their title over the property. Firstly, they claimed that the property was purchased in the name of Subbayamma as a 'Benami', secondly, the appellants claimed the title by way of adverse possession and thirdly, they claimed the property under Ex.B-1 alleged unregistered Will dated 29.12.1991. All the aforesaid three pleas of the appellants are inconsistent and they are not sure about the title of the property. If really the property was nominally purchased with the funds of the appellants, there cannot be any question of executing Ex.B-1 Will to distribute the property once again. Moreover, the appellants failed to prove that the property was purchased in the name of Subbayamma as a 'Benami' and the appellants also failed to prove that they are having title by way of adverse possession.

40. On appreciation of the entire evidence on record, the learned First Appellate Judge had arrived at a conclusion that the plaintiffs are having valid

title over the plaint schedule property. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that the second appeal did not involve any substantial question of law for the determination.

41. In the result, the second appeal is **dismissed** by confirming the judgment and decree passed by the First Appellate Court.

Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

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V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026
SRT