



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO.42 OF 2012
IN
TESTAMENTARY PETITION NO.64 OF 2011**

Dr. Govindaraja Venkatesh Iyengar,
Hindu of Indian Origin, Residing at 6202,
Maiden Lane, Bethesda, MD 20817,
USA and presently in Mumbai being
the Executor named in the abovementioned
Will of the deceased

... Plaintiff

versus

A.R.Sampathkumar (deceased)
through his legal heirs –

1A) S. Suresh Kumar, 4584, Temple Street,
N.R.Mohalla, Mysore 570 007

1B) Prakash S. Iyengar @ I.S.Prakash,
Plot No.73, Mysore Co-op. Housing
Society Ltd., Mahul Road,
Chembur, Mumbai – 400 074

... Defendants

Mr. Avinash Joshi with Mr. Karl Shroff i/by Mulla and Mulla and Craigie Blunt
and Caroe, for Plaintiff.

Mr. I.S.Prakash, Defendant No.1B, in person, present.

Mr. AjayJ. Yadav, Section Officer, Court Receiver Office, present.

CORAM: N.J.JAMADAR, J.

RESERVED ON	: 17 APRIL 2026
REHEARD ON	: 20 AUGUST 2026
PRONOUNCED ON	: 21 AUGUST 2026

JUDGMENT :

1. This suit is for grant of Probate of the last Will and Testament to the
property and credits of Rajalakshmi Gopal Ayengar @ Rajlaxmi Ayengar
(Testatrix).

2. The background facts can be stated, in brief, as under :

2.1 Dr. A.R.Gopal-Ayengar was an eminent scientist, who worked at Bhabha Atomic Research Center (BARC), Mumbai. The Testatrix was the wife of Dr. A.R.Gopal-Ayengar. Dr. A.R.Gopal-Ayengar and Rajalakshmi Gopal Ayengar – Testatrix, had a son, who passed away as a bachelor, in an accident. Dr. A.R.Gopal-Ayengar passed away on 8 September 1992, leaving behind his last Will and Testament dated 23 August 1992. Dr. Gopal-Ayengar had, under the said Will, bequeathed certain movable properties, including cash to his nephews, including A.R.Sampathkumar, the Caveator - Defendant, and the immovable property comprising of bungalow situated at 73, Mysore Colony, Mahul Road, Chembur, Mumbai – 400 074 was bequeathed to Rajalakshmi Gopal Ayengar. Thus, Rajalakshmi became the full and absolute owner of the said bungalow at the Mysore Colony (the subject property).

2.2 Under the said Will, Rajalakshmi was appointed as the executrix. During the lifetime of the Testatrix, as per the wishes of Dr. Gopal-Ayengar, an educational Trust under the name and style of A.R.Gopal-Ayengar Educational Trust was formed and registered under the governing laws at Bangalore.

2.3 Rajalakshmi passed away on 2 February 2002, allegedly leaving behind her purported last Will and Testament dated 22 December 1998 executed in

the presence of Mr. R.K.Ramanathan and Dr. P.T.V.Nair, the attesting witnesses.

2.4 Under the said Will, the Testatrix purportedly bequeathed her right, title and interest in the subject property to Dr. Govindaraja Venkatesh Iyengar – Petitioner / Plaintiff, who claimed to be her nephew. The Testatrix had, inter alia, desired that the Plaintiff may enjoy the subject property absolutely, and, in the alternative, if the Plaintiff so chooses, dispose of the property and use the proceeds thereof for the A.R.Gopal-Ayengar Educational Trust.

2.5 The Testatrix passed away four years after of the execution of the purported Will. The Plaintiff, who himself claims to be an internationally acknowledged scientist, and is staying in USA on account of his avocations, has filed the present Petition in the capacity of the executor of the purported Will of the Testatrix.

2.6 The Plaintiff asserts, at the time of her death, the Testatrix had left behind no surviving heirs. Her only son had predeceased the Testatrix and Dr. Gopal Ayengar. Dr. P.V.T.Nair and Mr. R.K.Ramanathan had attested the execution of the Will by the Testatrix. She was in a sound and disposing state of mind. A.R.Sampathkumar, the original Defendant, who has been in unauthorized occupation of the subject property, had initiated multiple proceedings before various authorities to usurp the properties left behind by the Testatrix.

2.7 On account of the professional engagements of the Petitioner and the circumstances that ensued due to various proceedings initiated at the instance of the Defendant, there was some delay in presenting the Petition for grant of Probate. The Plaintiff, thus, prayed for the Probate in respect of the last Will and Testament of the Testatrix.

2.8 The Caveator – Defendant filed a Caveat. Multiple affidavits were filed in support of the caveat. The Defendant contended that the Testatrix was his aunt i.e. wife of Gopal-Ayengar, the deceased brother of the father of the Defendant. At the time of her death, the Testatrix was residing with the Defendant and Prakash, who came to be impleaded as Defendant No.1B upon the demise of the original Defendant. The Caveator and his family have been residing at the subject premises since the lifetime of the Testatrix and her deceased husband. The caveator and his family members were taking care of the Testatrix and her deceased husband during their old age.

2.9 It was disputed that the Testatrix had left behind the purported last Will and Testament. It was contended that, prior to her death, the Testatrix was in a very critical condition and was of unsound mind. The Testatrix was regularly hospitalized for some ailment and other, including major pain in both knees. On 22 December 1998, the day Testatrix had made and published the purported last Will and Testament, the Testatrix was admitted in ICCU of BARC Hospital in an unconscious state. Taking undue advantage of the then

situation in life of the Testatrix, the Plaintiff and others have created false record and even manipulated the record maintained with Mysore CHS Ltd.

2.10 The Defendant categorically contended that the purported Will dated 22 December 1998 is bogus, null and void, as the stamp paper on which the purported Will has been scribed was purchased on 29 January 1998. The Petitioner and Mr. R.K.Ramanathan, who is also the purported beneficiary, have joined hands to usurp the property of the Testatrix. The Plaintiff and the purported beneficiaries under the Will, have created a bogus Trust in the year 1995. Late Rajalakshmi was never made a member of the said Trust. Nor was Rajalakshmi ever made a member of Mysore Co-op. Hsg.Soc. Ltd. The property still stands in the name of Dr. Gopal Ayengar and the Defendant has been in exclusive occupation of the subject property and had also been paying the municipal taxes and the electricity charges, etc., in respect of the subject property. The relationship between the Plaintiff and the Testatrix was also put in contest. Delay in filing the Probate Petition was also pressed into service to counter the claim of the Plaintiff.

2.11 In the additional affidavit filed on 16 April 2012, the events in regard to the inaction on the part of the Testatrix, absence of material to show that the Plaintiff was the relative of the Testatrix and the purported acts and omissions on the part of the Plaintiff and other persons to usurp the subject property, were highlighted. There was a gross delay in filing the Testamentary Petition.

There was no explanation for the inordinate and unexplained delay in filing the Petition for Probate after 10 years of the demise of the Testatrix. Thus, the Petition was liable to be dismissed on the count of delay and laches.

3. In the wake of the aforesaid pleadings, the following issues were settled. I have recorded my findings against each of them for the reasons to follow :

ISSUES	FINDINGS
1) Whether the respondent proves the deceased was not of sound and disposing mind on the date of execution of the Will by her on 22 nd December 1998 ?	In the negative
2) Whether the Petitioner proves the due execution of the Will by the deceased on 22 nd December 1998 ?	In the affirmative

REASONS

4. In order to substantiate the claim for grant of Probate, Dr. Govindaraja V. Iyengar (PW1) - the Plaintiff, has examined himself, and two witnesses namely, Mr. R.K.Ramanathan (PW2), who purportedly attested the Will, and Mr. Yeshwant Datay (PW3), a handwriting expert.

5. In the rebuttal, Mr. A.R.Sampathkumar (DW1), the deceased Defendant, entered into the witness box and also examined two witnesses, namely, Dr. P.T.V.Nair (DW2), the purported attesting witness to the Will and Mrs. Titiksha Desai-Kamble (DW3), another handwriting expert. The parties

have tendered and proved in evidence a number of documents to substantiate their respective contentions.

6. At the outset, it is necessary to note few uncontroverted facts. There is not much controversy over the fact that Dr. Gopal Ayengar was a renowned scientist and was Scientist Emeritus in BARC. The relationship between Dr. Gopal and the Testatrix is not in dispute. By and large, it could not be controverted that Dr. Gopal and Rajalakshmi (the Testatrix) had a son who passed away as a bachelor in an accident. The fact that Dr. Gopal was the holder of the subject property is also not much in dispute. The relationship between the original Defendant and Dr. Gopal Ayengar is also fairly admitted. The Caveator was the nephew of Dr. Gopal Ayengar. As a matter of fact, the occupation of the subject property by Prakash (D1B), the successor in interest of A.R.Sampathkumar, is also irrefutable. The parties are at issue over the execution of the purported Will, not only by the Testatrix, but also by Dr. Gopal Ayengar, in the year 1992. Both the dispositive power and the testamentary capacity of Rajalakshmi, the Testatrix, are put in contest. In particular, the Defendant has contended that the purported Will of the Testatrix is a false and forged document.

Broad Submissions :

7. In the context of the pleadings and the evidence adduced by the parties and the uncontroverted facts, I have heard Mr. Avinash Joshi, learned

Counsel for the Plaintiff, and Mr. Prakash Iyengar, Defendant No.1B.. Mr. Shroff, learned Counsel for the Plaintiff canvassed submissions in rejoinder.

8. Before evaluating the evidence, it may be apposite to note the broad submissions canvassed on behalf of the parties. In support of the claim for Probate, it was submitted that the Plaintiff who is himself a scientist of international repute, is prosecuting the suit for grant of Probate for a charitable cause only in deference to the wishes of the Testatrix. The Plaintiff does not have any pecuniary or monetary interest in the subject property and the Plaintiff intends to use the corpus for advancing the objects of A.R.Gopal Ayengar Educational Trust. Hence, the allegation of the Defendants that the proceedings having been filed with intent to usurp the estate of late Dr. Gopal Ayengar is wholly misconceived.

9. Secondly, the evidence adduced by the Plaintiff has virtually gone unimpeached. Dr. Govindaraja Iyengar (PW1) was not cross-examined at all. Nothing material could be elicited in the cross-examination of Mr. R.K.Ramanathan (PW2), the attesting witness, who gave a vivid account of the due execution and attestation of the Will in question. Mr. Yeshwant Datay (PW3), the graphologist, has ascribed justifiable reasons in support of the opinion that the signature on the Will (Exh.P-5) is that of the Testatrix. The expert testimony of Mr. Datay (PW3) also remained unchallenged.

10. Thirdly, the defence evidence, instead of demolishing, substantiates the

claim of the Plaintiff. The admissions elicited in the cross-examination of Sampathkumar Prakash (DW1) dismantle the defence of the Defendants that the Will is forged and fabricated and that the Testatrix was not in a sound and disposing state of mind. Dr. P.T.V.Nair (DW2), who was examined by the Defendants, to bolster up their case that, both Dr. Gopal and the Testatrix were not in a sound and disposing state of mind, has made a clean breast of the circumstances in which he was made to put his signature on an affidavit at the instance of Mr. Prakash – the Defendant 1B. The tenor of the evidence for Dr. P.T.V.Nair (DW2) significantly erodes the defence of the defendants.

11. The testimony of Mrs. Desai-Kamble (DW3), an expert witness, is of no assistance to the Defendant as she is not the author of the opinion tendered at the instance of Mr. Prakash – the Defendant 1B. Even otherwise, the said opinion does not command any value as it was rendered on the basis of a photostat copy of the document, without ample admitted signatures of the Testatrix.

12. It was submitted on behalf of the Plaintiff that, by examining the attesting witness and the handwriting expert, the Plaintiff discharged his initial onus. Conversely, the Defendants failed to demonstrate that the Will is forged and fabricated. The myriad circumstances sought to be urged on behalf of the Defendants do not have any bearing on the due execution and attestation of the Will, which has gone virtually untraversed. The purported suspicious

circumstances are not real and germane.

13. Lastly, mere production of the documents without leading any evidence in support of the documents is of no avail, even if the document has been marked in evidence. To buttress these submissions, reliance was placed on the judgments in the cases of **Madholal Sindhu V/s. Asian Assurance Co. Ltd. and Ors.**¹; **Sudhir Engineering Company V/s. Nitco Roadways Ltd.**² and **Shivkumar and Ors. V/s. Sharanabasappa and Ors.**³

14. In opposition to this, Mr. Prakash S. Iyengar, Defendant No.1B, would urge that if the signatures of the Testatrix on the purported Will are compared and contrasted with her admitted signatures, it becomes abundantly clear that the Testatrix had not executed the purported Will. Refuting the submissions on behalf of the Plaintiff that the evidence of Mrs. Desai-Kamble (DW3) was of no assistance to the defence, it was submitted that the said witness has referred to the record on the strength of which the opinion has been rendered. The mere fact that particular Officer who had signed the opinion is not available, does not detract materially from the value of the report of the handwriting expert.

15. Secondly, Mr. Prakash would urge, a concerted effort was made to suppress and destroy the original medical record maintained with the BARC hospital. Despite demands, the original medical record of the Testatrix was

1 AIR 1954 Bombay 305

2 1995 SCC Online Del 251

3 (2021) 11 SCC 277

not brought before the Court as that would indicate that on the date of the purported execution of the Will, the Testatrix was critically ill and admitted in ICCU while she was gasping for breath. In the face of such medical record, it cannot be urged that the Testatrix was in a sound and disposing state of mind on the day of the purported execution of the Will.

16. Mr. Prakash would further urge that the Plaintiff has miserably failed to establish that he is the nephew of late Rajalakshmi. On the contrary, there is overwhelming material to show that the deceased Defendant had been in the occupation of the subject property during the lifetime of the Testatrix. The original Defendant and Prakash were the immediate family members who attended to the Testatrix and her deceased husband. The material documents are still in the custody of the original Defendants. It was submitted that the claim of the Plaintiff that he has no pecuniary or monetary interest in the subject property is a red herring. The purported trust has been set up to usurp the subject property. Adverting to the contemporaneous correspondence with the office bearers of the trustees and other authorities, Mr. Prakash would urge that the attendant circumstances would indicate that the purported Will has been set up belatedly with an oblique motive.

17. To lend support to the aforesaid submissions, Mr. Prakash placed reliance on the judgments in the cases of **Niranjan Umeshchandra Joshi**

V/s. Mrudula Jyoti Rao and Ors.⁴; Muninanjappa and Ors. V/s. R. Manual and Anr.⁵ and the decision of this Court in the case of **Harsha Nitin Kokate V/s. Saraswat Co-op. Bank Ltd. And Ors.⁶** and **Dr. Anthony Sequeira and Ors. V/s. Cyrus Behram Irani and Ors.⁷**.

Consideration :

18. Section 63 of the Indian Succession Act, 1925, provides the manner in which the Will is to be executed. Clause (c) of Section 63 mandates the attestation of the Will by two or more witnesses; each of whom must have seen the Testator sign or received from the Testator a personal acknowledgment of the latter's signature on the Will; each of the two witnesses must himself sign the Will in the presence of the Testator. But it is not peremptory that, more than one witness should be present and attest the Will at the same time. Section 63 of the Act, 1925 is required to be read with Section 68 of the Indian Evidence Act, which specifies the requirements of adducing evidence in proof of execution of a document which is required by law to be attested. Section 68 of the Evidence Act, in terms, provides that, if a document is required to be attested by law, it cannot be used as evidence unless one attesting witness has been called for proving the execution of the document if the attesting witness is alive.

4 (2006) 13 SCC 433

5 (2001) 5 SCC 363

6 2010(3) Mh.L.J. 780

7 2012 (5) ALL MR 866.

19. Though the Will has to be proved like any other document, which is compulsorily required to be attested, yet the solemnity attached to the Will necessitates that the conscience of the Court that the writing propounded by the propounder is the last Will and Testament and it has been legally and validly executed and attested, must be satisfied. In the case of **Ved Mitra Verma V/s. Dharam Deo Verma**⁸, the Supreme Court has laid emphasis on the element of satisfaction of the conscience of the Court.

20. By a catena of decisions the nature and standard of evidence required to prove the Will has been delineated. In the case of **Jaswant kaur V/s. Amrit Kaur and Ors.**⁹, a three Judge Bench of the Supreme Court has crystalized the propositions which govern the proof of Will, as under :

“10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in R. Venkatachala Iyengar v.B.N. Thirumajamma & Others¹⁰ The Court, speaking through Gajendragadkar J., laid down in that case the following positions :--

1. *Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.*
2. *Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by*

8 (2014) 15 SCC 578

9 (1977) 1 SCC 369

10 AIR 1959 SC 443

Section 63 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death o[the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surround- ed by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is

surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. *If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution' of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."*

21. In the case of **Sridevi and Ors. V/s. Jayaraja Shetty and Ors.**¹¹,

the onus on the propounder was concisely encapsulated as under :

"14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged."

22. In the case of **Daulat Ram and Ors. V/s. Sodha and Ors.**¹², it was enunciated that the propounder has to show that the Will was signed by the

11 (2005) 2 SCC 784

12 (2005) 1 SCC 40

testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.

23. In the case of **Meena Pradhan and Ors. V/s. Kamla Pradhan and Anr.**¹³, on which reliance was placed by Mr. Shroff, the Supreme Court enunciated, inter alia, the following propositions which bear upon the controversy at hand. They read as under :

“10.8 Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

10.9 The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the

13 (2023) 9 SCC 734

content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will.

10.10 One who alleges fraud, fabrication, undue influence etcetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11 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. 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."

24. In **Shivkumar and Ors. (supra)**, on which reliance was placed by Mr. Shroff, the Supreme Court observed as under :

"12.4 The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the

execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

12.5 If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion etcetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6 A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.”

25. Keeping in view the aforesaid legal principles, readverting to the facts of the case, it is necessary to note that, the Court has the benefit of the testimony of two witnesses, who purportedly attested the execution of the Will by the Testatrix. The testimony of Mr. Ramanathan (PW2) and Dr. P.T.V.Nair (DW2) throws light on the circumstances in which the Will was purportedly executed by the Testatrix, although they were examined as Plaintiff’s and Defendant’s witnesses, respectively. Mr. Ramanathan (PW2) informed the Court that he was reporting to Dr. Gopal for almost two decades in his official

capacity and had immense respect for both Dr. Gopal and Rajalakshmi – the Testatrix. He claimed to have attested the last Will and Testament of Dr. Gopal, who passed away on 8 September 1992. Rajalakshmi was the executrix of the said Will. To fulfill the wishes of Dr. Gopal to perpetuate the memory of their deceased son, Rajalakshmi had caused A.R.Gopal Educational Trust, registered at Bangalore. He had acted as a trustee of the said Trust as a mark of respect and out of loyalty to Rajalakshmi.

26. In regard to the execution of the Will by Rajalakshmi, Mr. Ramanathan (PW2) deposed that on 21 December 1998, Mr. Baldev Mehta called him up and informed that Rajalakshmi had drawn up a Will and she was desirous of executing the same. She had expressed a desire that Mr. Ramanathan should act as one of the attesting witnesses. Thus, on 22 December 1998, Mr. Ramanathan (PW2) claimed to have visited BARC hospital. Rajalakshmi along with Mr. Baldev Mehta along with his wife Kaushalya, were present thereat. Dr. P.T.V.Nair (DW2) also arrived. Mr. Ramanathan (PW2) deposed that, in his presence and that of Mr. Nair (DW2), Rajalakshmi had set and subscribed her name at the foot of the testamentary paper and published the same as her last Will and Testament. Rajalakshmi had signed on each of the pages comprised in the said Will in his presence. Thereafter, at the request of Rajalakshmi, he had put his signature on the Will in her presence. Dr. Nair (DW2) also signed on the Will in the presence of Rajalakshmi. Rajalakshmi

was in a sound and disposing mind, memory and understanding and executed and published the Will of her free will and pleasure. Mr. Ramanathan (PW2) also claimed to have forwarded the maturity proceeds of the UTI mutual fund units, to which he was nominated by the Testatrix, to A.R.Gopal Ayengar Education Trust.

27. In the cross-examination of Mr. Ramanathan (PW2), it was elicited that Dr. Gopal was suffering from terminal cancer in the month of 8 August 1992. In regard to the execution and attestation of the Will and the state of health and mind of Rajalakshmi, nothing material could be elicited in the cross-examination of Mr. Ramanathan (PW2). On the contrary, Mr. Ramanathan (PW2) asserted that the Testatrix was of sound mental condition. She had usual problems associated with old age. Rajalakshmi was highly educated. She knew english and communicated with several distinguished scientists.

28. Evidently, the testimony of Mr. Ramanathan (PW2), on the core aspect of due execution and attestation of the Will by the Testatrix, went completely untraversed. Instead of eroding the claim of the witness in regard to the condition of the Testatrix at the time of the execution of the Will, the answers elicited in the cross-examination, fortify the claim of Mr. Ramanathan (PW2) on that score. Mr. Ramanathan (PW2) has deposed about his association with Dr. Gopal. That explains why he was called to act as an attesting witness to the Will of not only Dr. Gopal but Rajalakshmi. As Mr. R.K.Ramanathan

(PW2) was a confidant of Dr. Gopal Ayengar, the evidence of Mr. R.K.Ramanathan (PW2) in his capacity as an attesting witness has a ring of truth. The attendant actions and conduct of Mr. Ramanathan (PW2) lend credence to his testimony.

29. It is true, the Plaintiff categorically claimed that he was not present at the time of the execution and attestation of the Will by the Testatrix. Yet, the unimpeached testimony of the Plaintiff in regard to the situation in life of Dr. Gopal and the Testatrix, coupled with the testimony of Mr. Ramanathan (PW2) lend support to the Plaintiff's claim in regard to the due execution and attestation of the Will.

30. Mr. Yeshwant Datay (PW3), the graphologist, has furnished justification for arriving at the opinion (Exh.P-8) that the signature as "Rajalakshmi Ayengar" on documents marked as Exh.A-1, A-2 and A-3, are of the same person. They do show the same authorship. The enlarged graph of each exhibits show the same design, various disconnections similar to each other and the pattern of making the signature. All the signatures are visibly similar to each other.

31. Again nothing material could be brought out in the cross-examination of Mr. Datay (PW3), except that the Plaintiff and Ramanathan (PW2) had asked him to give an opinion. Even a suggestion was not put to Mr. Datay (PW3) that the signature appearing on the Will (A-1) was not that of Rajalakshmi, the

testatrix.

32. At this stage, recourse to the evidence of Dr. P.T.V.Nair (DW2), another attesting witness, becomes necessary. As noted above, Dr. Nair (DW2) was examined in proof of the Affidavit dated 18 May 2005 (Exh.D-4) purportedly sworn by him. Though Dr. Nair (DW2) identified his signature on the said affidavit, he categorically stated that he had not signed the said affidavit before the Notary and he cannot state when and how the said affidavit was notarized. Thereupon, Court questions were put to Dr. Nair (DW2).

33. Relevant questions and the answers given by Dr. Nair (DW2) to the Court deserve to be extracted. They read as under :

“To Court : Dr. Nair, are the contents of this affidavit which
bears your signature correct to your knowledge ?

Ans. No, they are not.

To Court : Please explain the circumstances in which you
signed this document.

Ans. In mid May 2005, I was working at the Barc hospital in Mumbai. Mr. Prakash (the Constituted Attorney of the Defendant) came to me and said he needed a letter in an affidavit form for his personal reasons but not for use anywhere else. He brought the document to me. I know Mr. Prakash well. I was working at the

hospital at that time. In good faith, but on the express understanding that the documents would not be used anywhere, I signed it for him.

To Court : Did you read the document before signing it ?

Ans. Yes, I did.

To Court : Is it your suggestion that there are portions of this document that are incorrect to your knowledge ?

Ans. Yes.

To Court : Can you identify for the Court which portions are incorrect ?

Ans. Paragraphs 2, 3, 4, 5 and 6 of this affidavit are entirely incorrect and I wholly disown all these statements. Paragraph 1 is correct. I am unclear about what paragraph 7 means.

Note : the document is permitted to be marked in evidence since the witness has deposed to it and has identified his signature. The marking does not indicate in any manner whatsoever that the contents of this document have been proved.”

34. At this stage, it would be necessary to extract the contents of the said

affidavit (Exh.D-4)

"AFFIDAVIT"

I, Dr. P. T. V. Nair, Head of Medical Division, BARC Hospital, Government of India, Anushaktinagar, Mumbai 400 094, do hereby state on solemn affirmation as under :-

1. I say that late Dr. A. R. Gopal-Ayengar was seriously ill and under my treatment in BARC Hospital during the period 8th August 1992 till his death on 8th September 1992, and late Smt. Rajalakshmi Gopal-Ayengar wife of Dr. A. R. Gopal-Ayengar was seriously ill and under my treatment in the ICCU/Hospital for breathlessness during the period 20th December 1998 to 4th January 1999 or thereabout.
2. I say that Shri R. K. Ramanathan now residing at B-3 Nidhi Co-operative Housing Society, Sector 16-A, Navi Mumbai, Mumbai – 400 703, approached me with some typed documents pertaining to some "WILL" and requested me to sign accordingly. I signed in good faith without knowing the contents of the documents/WILL.
3. I understand that late Dr. A. R. Gopal-Ayengar and late Smt. Rajalakshmi Gopal-Ayengar had executed "WILL". I say that late Dr. A. R. Gopal-Ayengar and late Smt. Rajalakshmi Gopal-Ayengar was seriously ill and not in sound state of mind and were hospitalized on several occasions. Question of making any WILL does not arise and also my purported attestation of such documents is not proper.
4. I say that I understand such documents is being given the color of the "WILL" to claim benefits thereunder by R. K. Ramanathan now residing at B-3 Nidhi Co-Operative Housing Society, Sector 16-A, Navi Mumbai, Vashi, Mumbai – 400 703.
5. I say that I hereby totally disagree with such purported

attestation on the documents signed by me inadvertently in BARC Hospital.

6. I say that this "AFFIDAVIT" is made in the interest of JUSTICE and out of my own WILL and WISH and not because of my coercion or pressure from any person nor from any relative of Late Dr. A. R. Gopal-Ayengar and his wife late Smt. Rajalakshmi Gopal-Iyengar.

7. I say that I should not be involved anywhere in connections with valid "WILL" made by late Dr. A. R. Gopal-Ayengar and Smt. Rajalakshmi Gopal-Ayengar. That I am not at all involved in ATTESTING any "WILL" on behalf of them."

35. Mr. Nair (DW2) has disowned the correctness of the contents in paragraphs 2, 3, 4, 5 and 6 and admitted the correctness of the contents in para 1 and stated that he was unclear about what para 7 meant.

36. During the course of the cross-examination on behalf of the Plaintiff, in regard to the health of Dr. Gopal Ayengar, Mr. Nair (DW2) conceded that from 8 August 1992 onwards, Dr. Gopal Ayengar was not seriously ill. He was in hospital for observation. In regard to the condition of Rajalakshmi, Dr. Nair (DW2) admitted that she was under his treatment at BARC hospital from December 1998 to January 1999. She had severe arthritis and was morbidly obese. She could not walk unsupported. However, she was not seriously ill. Mr. Nair (DW2) admitted his signature on the Will (Exh.P-5). He also admitted the signature and contents of the affidavit dated 14 December 2010 filed in support of the Probate Petition.

37. It would be contextually relevant to note that, Mr. Prakash (D1B) was permitted to further cross-examine Dr. Nair (DW2) and put questions in the nature of cross-examination. Dr. Nair (DW2) conceded that he had not read the contents of Rajalakshmi's Will before attesting the same. He added, he was neither supposed to, nor required to, read the contents of the Will. Answers to question Nos.18, 19, and 23 deserve to be extracted, as this Court has shown maximum latitude to Mr. Prakash since he conducted the cross-examination in person. They read as under :

"18. Did Mrs. Rajlaxmi Ayengar sign the Will in your presence ?
(I have take this question exactly framed by Mr. Prakash lyenger. I have not permitted the witness to answer. I have twice asked Mr. lyengar whether he is certain that he wants to put this question to this witness. Mr. lyengar insists. The witness may answer.).

Ans. Yes, she signed the Will in my presence.

19. Was anybody else present in the room at that time ?

Ans. Yes, Mr. Baldev Mehta, Mrs. Mehta and Mr. Ramanathan.

23. According to you, was Mrs. Rajlaxmi Ayengar conversant in English ?

Ans. Yes.

38. If the aforesaid answers are read in juxtaposition with the evidence of

Mr. Ramanathan (PW2), an inference becomes inescapable that the Testatrix had put the signatures on the Will (Exh.P-5) in the presence of both Mr. Ramanathan (PW2) and Dr. Nair (DW2).

39. It is true, the facts that Dr. Nair (DW2) has signed the affidavit (Exh.D-4) and was candid enough to admit the execution of the said affidavit (Exh.D-4), put the Court on guard. However, having regard to the manner in which Dr. Nair (DW2) deposed before the Court, evincible from aforesaid answers to Court and during cross-examination, the testimony of Dr. Nair (DW2) cannot be thrown overboard for being inconsistent with the previous statement in writing. Mr. Nair (DW2) categorically asserted that he had signed the affidavit, but not before the Notary. Nothing could be elicited in the cross-examination of Dr. Nair (DW2) on behalf of the Defendants to buttress the defence that Dr. Nair (DW2) had sworn the affidavit before the Notary declaring that both Gopal and Rajlakshmi – Testatrix, were seriously ill and were not in a sound state of mind. The propriety of executing of such an affidavit is also a matter which cannot be completely ignored.

40. At this stage, the manner in which A.R.Sampathkumar (DW1) fared in the cross-examination, assumes significance. In the cross-examination, Sampathkumar (DW1) conceded that he had filed a suit in the City Civil Court in respect of the subject property and claimed a declaration therein that he was the legal heir of Dr. Gopal Ayengar. Mr. Sampathkumar (DW1) further

admitted that he had given evidence in the said suit. To a pointed suggestion that in the said evidence, Mr. Sampathkumar (DW1) had stated that the Will of Rajalakshmi – Testatrix, was not tampered, he replied that, that was not correct. The questions that followed deserve to be extracted :

“5. (Shown bracketed portion of paragraph 25, copy of the cross-examination of the witness in City Civil Court Suit No.2023 of 2005 recorded on 17th February 2015. The portion shown to the witness reads as follows :

“It is correct to say that only the “Will” of Dr. Gopal Ayenger is tampered. It is correct to say that in fact the “Will” of Dr. Gopal Ayengar is tampered and [the “Will” of Rajlxmi Ayanger is not tampered”

Do you still maintain that your previous answer is correct ?

Ans. Yes.

6. In your evidence in the City Civil Court you have said that Rajlaxmi’s Will is not tampered. In your affidavit in this suit you claimed that her Will is tampered. Which of these two statements, according to you, is correct ?

(Witness’s attention is drawn to paragraph 1 of his present evidence affidavit)

Ans. I maintain that my evidence affidavit is correct.”

41. Evidently, Mr. Sampathkumar (DW1) had conceded on oath that the

Will of the Testatrix was not tampered with, but that of Gopal Ayengar was fabricated. The inconsistent deposition before the City Civil Court, by itself, may not be decisive. However, if appreciated in the light of the manner in which the attesting witnesses Mr. Ramanathan (PW2) and Dr. Nair (DW2) fared cross-examination, an inference becomes justifiable that the testimony of two attesting witnesses finds further support in the admission of Mr. Sampathkumar (DW1), the deceased Defendant, in the suit before the City Civil Court that, the Will of the Testatrix is not tampered with.

42. As the Plaintiff can be said to have discharged the initial onus to prove that the Will was signed by the Testatrix and she has put her signatures to the testament of her own free will, the onus shifted on the Defendant who alleged that the Will was fabricated and forged.

43. It is settled position in law that, where a person who challenges the legality and validity of the will alleges fabrication or existence of vitiating elements, like fraud, undue influence and coercion, the onus rests on such person to prove those factors. Albeit even in the absence of such pleas, where there are suspicious circumstances surrounding the execution of the Will, it is again a part of the initial onus of the propounder to explain the suspicious circumstances and remove all reasonable doubts in regard to the due execution and attestation of the Will, and the sound and disposing state of mind of the testatrix. In the case at hand, the entire defence of the

Defendant in regard to the fabrication of the Will of the Testatrix rests on the testimony of the handwriting expert Mrs. Titiksha Kamble (DW3).

44. The evidence of Mrs. Titiksha Kamble (DW3), handwriting expert, examined by the Defendant, to put in contest the genuineness of the signature of the Testatrix on the Will, does not seem to be of much assistance to the Defendant. Evidently, the said report (Exh.D-5) is prepared and signed by Ms. Neha Raut. When confronted with the question as to what her assertion that the said report (Exh.D-5) was verified by her meant, Ms. Kamble (DW3) explained that Ms. Raut was her junior and worked under her guidance. Ms. Raut had prepared the report under her supervision and guidance. Mr. Raut had left the services at her advisory company and, thus, it would not be possible to produce Ms. Raut for cross-examination.

45. Plainly, Ms. Kamble (DW3) is not the author of the Report. Nor does Mr. Kamble (DW3) claimed to have herself examined the questioned and purported admitted documents and formed an opinion which was documented in the form of report (Exh.D-5) by Ms. Raut. Even if maximum latitude is given to the testimony of Ms. Kamble (DW3) discounting the aspect of the examination of the disputed and admitted documents and the preparation of the report (Exh.D-5), yet, the very method and material on the basis of which the report (Exh.D-5) has been prepared, erodes the credibility of the opinion.

46. Ms. Kamble (DW3) conceded in unequivocal terms that, only the

photostat copy of the disputed Will was delivered for examination along with the original accounts receipt and original cheque No.74670 of United Bank of India. When Ms. Kamble (DW3) was asked as to the person who admitted the signature on the purportedly admitted document, Ms. Kamble (DW3) candidly replied that it was Mr. Prakash and no body else had admitted the signatures of the deceased on the purported admitted documents. She went on to add that, she had called for more samples of the signatures of the deceased, but they were not provided. Nor she had taken an inspection of the original Will in the Court. She further conceded in no uncertain terms that she did not get adequate number of known writings and that it was possible that the signatures on the Will which was marked as D-1 in the report, were that of the Testatrix.

47. The aforesaid nature of the testimony of Ms. Kamble (DW3) renders it extremely unsafe to attach any value to the report (Exh.D-5). Firstly, the opinion is based on a photostat copy of the Will, which in itself renders the opinion inherently weak.

48. A useful reference can be made to the decision of the Supreme Court in the case of **S.P.S.Rathore V/s. CBI**¹⁴, wherein the Supreme Court exposted that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not.

14 (2017) 5 SCC 817

It is opinion evidence and it can rarely, if ever, take the place of substantive evidence.

49. In the case of **Abhay Jain V/s. State of M.P.**¹⁵, the Madhya Pradesh High Court underscored the risks in placing reliance on the opinion of the handwriting expert based on examination of photostat documents. The following observations deserve to be extracted :

“29. the expert should form opinion on the basis of study of original document. The reason being that the pressure points are analyzed by the hand writing expert for which original are required. In the absence of original documents, the analysis of a questioned document is limited to the features that survive the copying process. This is like to identify a person behind a cloudy window; the basics are there, but details are missing. What we call the “three-dimensionality” of the original document is lost. Not to mention that if the copy is a copy of a copy, the details become increasingly difficult to verify.

.....

44. Originals are always the best evidence. For a more productive result, both questioned and admitted documents should be in original.

45. While considering the question as to whether hand writing expert can give opinion on the basis of photocopy, the Hon’ble High Court of Andhra Pradesh replied in **Bheri Nageswara Rao V/s. Mavuri Veerabhadra rao, AIR 2006 AP 314** that :

“5. *The opinion of a hand writing expert involves*

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the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analyses would become possible only vis-a-vis an original signature; and the signature mark on a xerox copy of a document can never constitute the basis."

50. Following the aforesaid pronouncement, the learned Single Judge of the Delhi High Court in the case of **Narendra Kumar V/s. The Management of M/s. Maman Chand Ramji Das**¹⁶ observed that the report of the handwriting expert remained questionable and unreliable since the same was based on the examination carried upon xerox documents. Reasons and factors like loss of detailing, patching, fraudulent manipulation, paper etc., cannot be properly assessed and examined by the expert when only xerox copy is made available.

51. Secondly, there is a serious doubt as to the documents which were tendered to the handwriting expert as the admitted documents. None of the documents originated from the custody which could be termed proper, so as to lend assurance regarding the signature on such document being that of the testatrix. Thirdly, the expert has conceded in clear and explicit terms that she had not had the benefit of more samples/specimen signatures of the Testatrix, which in the circumstances of the case, she considered necessary. Lastly,

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the clear and explicit admission that the signatures on the photostat copy of the Will might be that of the Testatrix, completely denudes the report (Exh.D-5) of value as an opinion of expert.

52. Cumulatively, the due execution and attestation of the Will can be said to have been proved beyond the pale of controversy.

53. This propels me to the aspect of sound and disposing state of mind of the testatrix at the time of the execution of the Will. The substratum of the defence was that the testatrix was seriously ill and was not in a state to execute the Will and appreciate the nature and consequences of the disposition under the purported Will.

54. It is imperative to note, the fact that the Will was made at BARC hospital is not in dispute. Whether the testatrix was in a sound and disposing state of mind and understood the nature and effect of the dispositions thereunder, is the moot question. To buttress the defence that the testatrix was critically ill, the Defendant has placed on record only the photostat copies of the medical case papers of the testatrix. No effort was made by the Defendant to examine any witness in proof of the correctness of the entries in the photostat copies, even if some allowance is given to the Defendant No.1B, for his inability to place on record the original medical case papers. Since the Defendant No.1B appeared in person and the testamentary Court is the Court of conscience, this Court considered it appropriate to peruse the

photostat copies of the medical case records to satisfy its conscience.

55. Entries in the medical case records dated 20 December 1998 indicate that the Testatrix was admitted in hospital with a history of breathlessness since afternoon, mild fever, dry cough since 10-15 days and chest pain in the morning. The Testatrix was seen by RMO, ICCU. She was advised to be admitted in Ward IV-A and have x-ray portable and blood tests. It appears that the testatrix was prescribed medicines and intravenous injections.

56. The record of the next examination of the testatrix makes it clear that there was no palpitation, giddiness, syncopal attack, no puffiness of face, swelling of feet, and no pain in abdomen. On 22 December 1998, the day the Will was executed, although the Testatrix was under treatment, yet, the medical case record nowhere indicates that the Testatrix was not in a sound state of mind and her faculties were impaired and she was unable to understand the nature and consequences of the acts. The medical case record is required to be appreciated in the light of the fact that the testatrix was 76 years of age. She was a known case of IHD and HT. The Testatrix was frequently availing treatment at BARC hospital. Moreover, the Testatrix lived for over four years after the execution of the Will, on 22 December 1998.

57. As noted above, Dr. Nair (DW2) has categorically deposed that, on that day, the Testatrix was not seriously ill. In the absence of any cogent evidence to rebut the evidence adduced by Mr. Ramanathan (PW2) and Dr. Nair

(DW2), this Court finds it difficult to draw an inference that the Testatrix was not in a sound and disposing state of mind on the basis of the affidavit of Dr. Nair (D2), the contents of which have been disowned by Dr. Nair (DW2), and the entries in the photostat copies of the medical case papers.

58. As regards the dispositive power of Rajalakshmi, it is necessary to note that, de hors the execution of the Will by Dr. Gopal, under which the subject property was bequeathed to Rajalakshmi, even on the basis of intestate succession, Rajalakshmi was the sole surviving Class I heir of Dr. Gopal. Their son had predeceased Dr. Gopal. It was not the case of the Defendant that, any other Class I heir of Dr. Gopal was alive at the time of his death. Thus, the property left behind by Dr. Gopal would have devolved on Rajalakshmi alone, either under the testamentary or intestate succession. The Defendant was, thus, not entitled to succeed to the estate of Dr. Gopal, not being the Class I heir. Consequently, the Defendant cannot be said to have any caveatable interest qua the Will of Dr. Gopal.

59. It is trite, in the absence of the testamentary disposition, as Rajalakshmi had no son or daughter alive at the time of her death, in the event of intestate succession, the question of the source of the property devolved upon Rajalakshmi would come into play in view of the provisions contained in Section 15(2) of the Hindu Succession Act, 1956. In the event Rajalakshmi died intestate, the property would have devolved upon the heirs of the

husband under Section 15(2)(b), and in that case, the caveator had a chance to succeed to the subject property. However, that would not impinge upon the dispositive power of the testatrix to dispose of the subject property during her lifetime by testamentary instrument, as she became the absolute owner of the subject property after the demise of Dr. Gopal.

60. This leads me to the aspect of delay in seeking the Probate. It is well neigh settled that the application for grant of Probate, merely seeks recognition from the Court to discharge the duty of the executor. Right to apply for Probate or Letters of Administration is thus, construed to be in the nature of a continuing right. At the same time, it must be noted that, it is one thing to state that the right to apply for grant of Probate or Letters of Administration is a continuing right and it is a completely different thing to hold that the Limitation Act, 1963 does not at all govern the application for grant of Probate. Article 137 which is a residuary Article, provides a period of limitation of three years for any other Application for which no period of limitation is specifically provided. The crucial expression in Article 137 is 'the time beings to run when the right to apply accrues'. Indisputably, Article 137 of the Limitation Act, governs a proceeding for grant of Probate or Letters of Administration also.

61. In the case of **Kunvarjeet Singh Khandpur V/s. Kirandeep Kaur &**

Ors.¹⁷, the Supreme Court considered the question as to whether Article 137 of the Limitation Act, applies to a proceeding for a grant of Probate and Letters of Administration and held that such proceeding merely seeks recognition from the Court to perform a duty and because of the nature of the proceeding, it is a continuing right. Yet, it cannot be said that the application for grant of Probate or Letters of Administration is not covered by Article 137 of the Limitation Act.

62. It would be contextually relevant to note that in the aforesaid decision, the Supreme Court referred to the judgment of this Court in the case of ***Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani***¹⁸. The Supreme Court enunciated the law as under:

13] Article 137 of the Limitation Act reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division.	Three Years	When the right to apply accrues

The crucial expression in the petition (sic Article) is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings it is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was S.

¹⁷ (2008) 8 SCC 463

¹⁸ 1983 Bombay 268.

Krishnaswami v. E. Ramiah. In para 17 of the said judgment it was noted as follows: (AIR p. 222).

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under Art. 137 of the Limitation Act, 1963.

14] Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in Kerala SEB case.

15] Similarly reference was made to a decision of the Bombay High Court's case in *Vasudev Daulatram Sadarangani v Sajni Prem Lalwani*, AIR 1983 Bom.268. Para 16 reads as follows :(AIR p. 270).

"16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:-

(a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of

the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates".

Conclusion (b) is not correct while the Conclusion (c) is the correct position of law.

(emphasis supplied)

63. Referring to a judgment of this Court in the case of **Vasudev Daulatram Sadarangani** (supra), the Supreme Court held that the enunciation by this Court that, the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased is unwarranted, was not correct. However, the proposition that an application for grant of Probate or Letters of Administration is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right, which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed, was the correct position in law.

64. The aforesaid pronouncement was followed by the Supreme Court in the case of **Ramesh Nivrutti Bhagwat v. Dr Surendra Manohar Parakhe**¹⁹. In paragraph 14 of the judgment, the Supreme Court held that in **Kunvarjeet Singh Khandpur** (supra), the Supreme Court had concluded that right to apply for Probate accrues on the death of the Testator. However, it is necessary to note the issue in the said case arose out of the applicability of the period of limitation for an application to revoke the Probate or the Letters of Administration.

65. Rule 382 of the Bombay High Court (Original Side) Rules, 1980 provides as under:

“382 Delay in application:

In any case where an application for Probate or letters of administration or succession certificate is made for the first time after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the petition. Should the explanation be unsatisfactory, the Prothonotary and Senior Master may require such further proof of the alleged caused of delay as he may deem fit.”

66. In a recent pronouncement in the case of **Sanjay Sharma @ Sanjay Bhardwaj V/s. Krishnadhan Khaware and Ors.**²⁰, the Supreme Court referred with approval, the aforesaid decision in the case of **Kunvarjeet Singh Khandpur v/s. Sanji Prem Lalwani (supra)**. The Supreme Court postulated three-fold purpose of the Probate of a Will, as under :

¹⁹ (2020) 17 SCC 284.

²⁰ 2026 INSC 708

“5. The Probate of a Will has three-fold purposes – (a) It is a judicial stamp of a approval on the genuineness of the Will; (b) It acknowledges the appointment of an executor of the Will; (c) It grants the executor to act for the purposes of the Will. Keeping this in view, the specific view that the period of limitation for Probate commences from the death of the testator has been rejected.”

67. In the context of the aforesaid legal position and the requirement of Rule 382, it has to be seen whether the Plaintiff has offered any satisfactory explanation. Initially, the Plaintiff asserted that Mr. Sampathkumar – caveator, after the demise of the testatrix, was filing various proceedings before the police authorities, courts, government agencies. The Plaintiff was defending those proceedings bonafide. Later on, the Plaintiff was advised that, irrespective of the proceedings, Probate of the Will was required and, therefore, the Petition was filed. Later on, the Plaintiff amended the Petition and offered explanation in regard to the delay in filing the Probate Petition. It was, inter alia, asserted that the Plaintiff being an internationally acclaimed scientist was staying in USA, and that the Plaintiff was advised that the Probate Petition cannot be filed through a power of attorney; since the High Court had twice directed Sampathkumar, the defendant, to file appropriate proceedings before the Testamentary Court, the Plaintiff awaited the filing of such proceedings; that the Advocate who represented the Plaintiff stopped

attending the matters and, that, eventually, the executor was required to come to India and take steps to file the Petition for grant of Probate.

68. Mr. Shroff, the learned Counsel for the Plaintiff submitted that the Plaintiff has not only offered explanation for the delay in filing the Petition for probate but has put oath behind those assertions in the affidavit in lieu of examination-in-chief. Attention of the Court was invited to paragraphs 14, 15 and 16 of the affidavit in lieu of examination-in-chief. This entire version of the Plaintiff has gone completely unchallenged as the Defendant declined to put any question to the Plaintiff in his cross-examination. Therefore, the suit for grant of Probate to discharge the duties of the Executor cannot be dismissed on the ground of delay.

69. Mr Prakash countered the submissions of Mr. Shroff mainly on the merits of the defences, adverted to above. It was submitted that there was no reason for the Plaintiff not to file the Petition for probate for over nine years of the death of the testatrix.

70. On the aspect of the law of Limitation, as noted above, in the case of **Kunvarjeet Singh Khandpur (Supra)**, the Supreme Court has approved the enunciation of the principles by this Court in the case of **Vasudev Daulatram Sadarangani (Supra)**, except the proposition (b), namely, the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted. The Supreme Court expressly

approved proposition (c) that, an application for Probate is for the Court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.

71. In the case of **Sanjay Sharma Alias Sanjay Bhardwaj (Supra)**, the Supreme Court has again given its imprimatur to the prepositions laid down in the case of **Vasudev Daulatram Sadarangani (Supra)**, by observing that the said decision has been quoted with approval by the Supreme Court in the case of **Kunvarjeet Singh Khandpur (Supra)**, except one point proposition (b).

72. At this juncture, it is necessary to note that this Court in the case of **Vasudev Daulatram Sadarangani (Supra)** further enunciated that delay beyond three years must be explained, but cannot be equated with absolute bar of limitation and once execution and attestation are proved, the suspicion of delay no longer operate. Pertinently, having examined the correctness of the propositions (a) to (g) enunciated that in the case of **Vasudev Daulatram Sadarangani (Supra)**, in the respectful understanding of this Court, the Supreme Court has not disapproved the other propositions except proposition (b), extracted above.

73. This position was clarified by a Division Bench of this Court in the case of **Wilma Levert Canuao Vs Allan Sebastian D'Souza**²¹ wherein there was a delay of seven years in filing a Petition for Probate. The Division Bench after referring to the judgments in the cases of **Vasudev Daulatram Sadarangani (Supra)** and **Kunvarjeet Singh Khandpur (Supra)** postulated that it is well settled principle that an application for grant of Letters of Administration or Petition for grant of Probate seeks, in substance and in effect, the permission of the Court to perform a legal duty created by the Will or for recognition as a testamentary trustee. This necessarily involves a continuing cause of action and so long as the right to do so survives and the object of the trust remains to be executed, the cause of action would not be barred by limitation.

74. In the facts of the said case, after adverting to propositions (f) and (g) in the case of **Vasudev Daulatram Sadarangani (Supra)**, the Division Bench observed that since the Division Bench had come to the conclusion that the execution and attestation of the Will had been duly proved, it declined to accept the contention that the delay should result in the dismissal of the suit.

75. On the anvil of the aforesaid legal position, if the facts of the case at hand are appraised, it becomes evident that the Plaintiff has categorically, asserted that the Petition has been filed to give effect to the Will of the Testator to dispose of the subject property and use the proceeds thereof for

²¹ 2014(3) MhLJ 1.

the A.R.Gopal-Ayengar Educational Trust, established pursuant to the wishes of Dr. A.R.Gopal-Ayengar. The said Trust was formed in the year 1995 during the lifetime of the Testatrix. The object of the Trust remains to be executed. Therefore, an inference becomes justifiable that duty of the executor yet remains to be discharged.

76. It is true, the Defendant had initiated proceedings even questioning the legality and validity of the Will (Exhibit P-5) and the Plaintiff participated in those proceeding, albeit through a Power of Attorney. The circumstance in which those proceeding were defended, the impression that the Plaintiff had about the outcome of those proceeding to achieve a quietus to the dispute, the legal advice purportedly received by the Plaintiff and the constraints the Plaintiff had faced on account of his position, avocation and residence in Unites States, were all specifically pleaded by the Plaintiff in the Testamentary Petition by carrying out the amendment in the Petition, purportedly upon an objection being raised by the Registry in regard to the delay. The Plaintiff has also deposed on oath in regard to the circumstances on account of which the Petition could not be filed at an earlier point in time (Paragraphs 14, 15 and 16 of the Affidavit). These assertions of the Plaintiff have gone unimpeached.

77. In the totality of the circumstances, if viewed in the light of the avowed purpose for which the Plaintiff seeks Probate and a categorical assertion that the Plaintiff does not claim any pecuniary or monetary interest in the subject

property and the sale proceeds thereof are to be utilised for the advancement of the object of the A.R.Gopal-Ayengar Educational Trust, established in deference to the wishes of Dr. A.R.Gopal-Ayengar, and the conclusion this Court has arrived at, that the execution and attestation of the Will (Exhibit P-5) has been duly proved and it is the last Will and Testament of the Testatrix, in the considered view of this Court, the Plaintiff cannot be non-suited on the ground of delay.

78. In conclusion, the broad features of the case deserve to be encapsulated. Firstly, Dr A.R. Gopal-Ayengar, the Testatrix had lost their only son in an accident. Secondly, the Testatrix succeeded to the estate left behind by Dr. A.R.Gopal-Ayengar as an absolute owner. Thirdly, the A.R.Gopal-Ayengar Educational Trust was established during the lifetime of the Testatrix. Fourthly, the due execution and attestation of the Will has been proved to the satisfaction to the conscience of the Court. Fifthly, the disposition under the Will is in accord with the wishes of Dr. A.R. Gopal-Ayengar. Sixthly, the desire to keep the memory alive by promoting a charitable cause is natural when Dr. A.R. Gopal-Ayengar and the Testatrix lost their only son in an accident. Seventhly, the Defendant has failed to adduce any evidence in support of the contention that the Will is a forged and fabricated document. Even the challenge on the count that the Testatrix was not in a sound and disposing state of mind is proved to be unworthy of the acceptance in the light of the

evidence and material on record. Lastly, the situation in life of the Plaintiff and the categorical assertion of the Plaintiff that the estate would be used for the advancement of the object of the Trust, negates the fulcrum of the defence of the Defendant that the Plaintiff and the former associates of Dr. A.R.Gopal-Ayengar have conspired to usurp the estate of Dr. A.R.Gopal-Ayengar.

79. For the foregoing reasons, issue No.1 is answered in the negative and Issue No.2 is answered in the affirmative.

80. Resultantly this Court is inclined to grant Probate.

81. Hence, the following order:

: O R D E R :

- (i) The Suit stands decreed.
- (ii) Probate be granted to the Plaintiff having its effect throughout India.
- (iii) Parties shall bear their respective costs.
- (iv) Decree be drawn up accordingly.

[N. J. JAMADAR, J.]

Mr. Prakash, Defendant No.1B, seeks stay to the execution and operation of the decree as he intends to prefer an appeal against this judgment.

Mr. Shroff opposes the prayer for stay.

Since the Defendant No.1 appears in person, and having regard to the fact that the Probate is being granted in respect of the Will executed in the year 1998, the execution and operation of the decree is stayed for a period of six weeks to facilitate the Defendant No.1B to prefer an appeal.

[N. J. JAMADAR, J.]