A MURTHY & ORS.

v.

C. SARADAMBAL & ORS.

(Civil Appeal No. 4270 of 2010)

B DECEMBER 10, 2021

[L. NAGESWARA RAO AND B. V. NAGARATHNA, JJ.]

Will: Suspicious circumstances in execution of will – Bequest made in the name of testator's son to the exclusion of testator's daughters – Testator's son lived for eleven years after the death of their father – Petition seeking Letters of Administration filed fifteen years after the death of the testator by wife of testator's son – Daughters of testator defendants sought for dismissal of the petition on the ground that the will was fabricated – Held: It is highly improbable that the only son of the testator who was a practicing advocate and on whom the bequest of the house was made, was unaware of the execution of the will by his father – It is unnatural that the father would not have disclosed to his only son about the bequest of the property and had also not taken his son's assistance in the drafting as well as execution of the will – The testator had suffered a paralytic stroke which had affected his speech, mobility of his right arm and right leg and he was bedridden for a period of ten months prior to his death – Taking these circumstances into consideration, a doubt is created as to whether the testator was in a sound and disposing state of mind at the time of making of the testament which was fifteen days prior to his death – The said suspicion in the mind of the Court has not been removed by the propounder of the will i.e. first plaintiff by producing any contra medical evidence or the evidence of the doctor who was treating the testator prior to his death – Testator had himself stated in the alleged will that he was sick and getting weak even then he is stated to have "written" the will himself which is not believable – s.63 of the Succession Act, 1925 categorically states that the testator has to sign on the will and the signature of the testator must be such that it would "intend" thereby to give effect to the writing of a will – Hence, the genuineness of the will must be proved by proving the intention of the testator to make the testament and for that, all steps which are required to be taken for making a valid testament must be

proved by placing concrete evidence before the Court – There is no evidence as to whom the testator gave instructions to write the will – The scribe was also not examined – In order to prove the execution of the document such as a testament, at least one of the attesting witnesses who had attested the same must be called to give evidence for the purpose of proof of its execution – One attestor had died – The second attestor, PW2 had given his evidence – PW2 deposed that the will could not be registered as the testator was unwell and in fact, he was bedridden – His deposition was rather fatal to the case of the beneficiary of the Will – Trial Court had also not believed the evidence of PW2 – Respondents-plaintiffs were not successful in proving the validity of the will in accordance with law inasmuch as the suspicious circumstances surrounding the very execution of the will were not cleared by any cogent evidence, rather, the genuineness of will remained in doubt – The alleged Will not being a valid document in the eye of law, no Letters of Administration can be granted to the respondents-plaintiffs – Succession Act, 1925 – s.63.

Judgment/Order: Reasoned order – Duty of Appellate court while affirming, modifying or reversing the judgment of lower court – Held: The Appellate Court has jurisdiction to reverse, affirm or modify the findings and the judgment of the Trial Court – However, while reversing or modifying the judgment of a Trial Court, it is the duty of the Appellate Court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the Appellate Court – No doubt, when the Appellate Court affirms the judgment of a Trial Court, the reasoning need not to be elaborate although re-appreciation of the evidence and reconsideration of the judgment of the Trial Court are necessary concomitants – But while reversing a judgment of a Trial Court, the Appellate Court must be more conscious of its duty in assigning the reasons for doing so – In the instant case, High Court has dealt with the judgment of the Trial Judge in a short cut method, bereft of all reasoning while reversing the judgment of the Trial Court both on facts as well as law.

Judgment/Order: Duty of Appellate court, while reversing the judgment of lower court – Held: While writing a judgment of reversal, an Appellate Court must remain conscious of two principles – Firstly, the findings of facts based on conflicting evidence arrived

A *at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment – If, on an appraisal of the evidence, it is found that the judgment of the Trial Court suffers from a material irregularity or is based on inadmissible evidence or*
B *on conjectures and surmises, the Appellate Court is entitled to interfere with the finding of fact but by assigning cogent reasons for doing so – Otherwise, the findings of the Trial Court should not be interfered with lightly on a question of fact – Secondly, while reversing a finding of fact, it is necessary that the Appellate Court assigns its own reasons for doing so – This is especially so in case*
C *there are further appeals under s.100, CPC, as the first Appellate Court is the final court of facts and the said findings are immune from challenge in a second appeal.*

Appeal: Right to file appeal – Held: Right to appeal is a creature of statute – The right to file an appeal by an unsuccessful
D *party assailing the judgment of the Original Court is a valuable right and hence a duty is cast on the Appellate Court to adjudicate a first appeal both on questions of fact and applicable law – Hence, the re-appreciation of evidence in light of the contentions raised by the respective parties and judicial precedent and the law applicable*
E *to the case have to be conscientiously dealt with.*

Allowing the appeal, the Court

HELD: 1. The respondents-plaintiffs have failed to prove the will (Ex-P1) in accordance with law inasmuch as they have not removed the suspicious circumstances, surrounding the
F **execution of the will. Hence, Ex-P1, not being a valid document in the eye of law, no Letters of Administration can be granted to the respondents-plaintiffs. The Trial Judge was right in dismissing the suit. However, the Appellate Court being the Division Bench has reversed the judgment and decree passed by the Trial Court and has decreed the suit. The judgment of the Appellate Court**
G **was written in a cryptic manner. It is observed that the judgment could be brief and succinct if the Appellate Court is to dismiss an appeal and affirm the judgment and decree of the Trial Court. But when the judgment and decree of the Trial court is to be reversed then it is incumbent upon the Appellate Court to dwell**

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into the matter in detail and to give reasons for reversing the same. Assigning reasons not only makes the judgment wholesome, but is also necessary in order to deduce and lead to just conclusions. The High Court has dealt with the judgment of the Trial Judge in a short cut method, bereft of all reasoning while reversing the judgment of the Trial Court both on facts as well as law. It is trite that the Appellate Court has jurisdiction to reverse, affirm or modify the findings and the judgment of the Trial Court. However, while reversing or modifying the judgment of a Trial Court, it is the duty of the Appellate Court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the Appellate Court. No doubt, when the Appellate Court affirms the judgment of a Trial Court, the reasoning need not to be elaborate although reappreciation of the evidence and reconsideration of the judgment of the Trial Court are necessary concomitants. But while reversing a judgment of a Trial Court, the Appellate Court must be more conscious of its duty in assigning the reasons for doing so. [Paras 35, 36, 37][859-E-H; 860-A-D]

2. The right to file an appeal by an unsuccessful party assailing the judgment of the Original Court is a valuable right and hence a duty is cast on the Appellate Court to adjudicate a first appeal both on questions of fact and applicable law. Hence, the reappreciation of evidence in light of the contentions raised by the respective parties and judicial precedent and the law applicable to the case have to be conscientiously dealt with. In the instant case, the Division Bench of the High Court has simply reversed the judgment of the Trial Judge in the absence of reappreciation of evidence and without giving findings on questions of fact as well as on the applicable law and by not reasoning as to why the judgment of the Trial Judge was erroneous. [Paras 41, 42][862-B-D]

Santosh Hazari v. Purushottam Tiwari (deceased) by LRS **(2001) 3 SCC 179;** *B.V. Nagesh v. H.V. Sreenivasa Murthy* **(2010) 13 SCC 530 : [2010] 11 SCR 784;** *Vinod Kumar v. Gangadhar* **(2015) 1 SCC 391 : [2014] 10 SCR 1050 – relied on.**

A *H.Venkatachala Iyenger vs. B.N.Thimmajamma* **AIR 1959 SC 443 : [1959] Suppl. SCR 426;** *Jaswant Kaur v. Amrit Kaur and others* **(1977) 1 SCC 369 : [1977] 1 SCR 925;** *Bharpur Singh and others v. Shamsher Singh* **(2009) 3 SCC 687 : [2008] 17 SCR 517;** *Naranjan Umeshchandra Joshi v. Mrudula Jyoti Rao,* **(2006) 13 SCC 433 : [2006] 10 Suppl. SCR 1214;** *Anil Kak v. Sharada Raje* **(2008) 7 SCC 695 : [2008] 6 SCR 1009;** *Leela Rajagopal and others v. Kamala Menon Cocharan and others,* **(2014) 15 SCC 570 : [2014] 7 SCR 697 – referred to.**

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Case Law Reference

[1959] Suppl. SCR 426	**referred to**	**Para 30(a)**
[1977] 1 SCR 925	**referred to**	**Para 30(b)**
[2008] 17 SCR 517	**referred to**	**Para 30(c)**
[2006] 10 Suppl. SCR 1214	**referred to**	**Para 30(d)**
[2008] 6 SCR 1009	**referred to**	**Para 30(e)**
[2014] 7 SCR 697	**referred to**	**Para 30(f)**
(2001) 3 SCC 179	**relied on**	**Para 38**
[2010] 11 SCR 784	**relied on**	**Para 39**
[2014] 10 SCR 1050	**relied on**	**Para 40**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4270 of 2010.

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From the Judgment and Order dated 08.12.2008 of the High Court of Judicature at Madras in O.S.A. No.470 of 2002.

S. Vallinayagam, Rutwik Panda, Advs. for the Appellants.

K. K. Mani, Ms. T. Archana, Advs. for the Respondents.

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The Judgment of the Court was delivered by

NAGARATHNA J.

This appeal assails the judgment and decree dated 08th December, 2008 passed by the High Court of Judicature at Madras, in O.S.A. No. 470 of 2002 by which the judgment and decree passed in T.O.S. No. 20

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of 1994, wherein the learned Trial Judge of the High Court had dismissed the suit for grant of Letters of Administration, was set aside and the said suit was decreed. A

2. For the sake of convenience, the parties shall be referred to in terms of their status in O.P. No. 150 of 1993 which was converted to T.O.S. No. 20 of 1994, which was filed for grant of Letters of Administration. B

3. It is the case of the plaintiffs that E. Srinivasa Pillai, father-in-law of the 1st plaintiff, had died on 19th January, 1978 leaving behind his last will and testament dated 04th January, 1978. The said will was said to be executed in the presence of two attestors. The testator E. Srinivasa Pillai had a son, named S. Damodaran, who died intestate on 03rd June, 1989 at Madras, leaving behind the plaintiff-wife C. Saradambal and his two daughters viz., D. Prema, aged 20 years and D. Deepalakshmi, aged 18 years. The testator, apart from his son, S. Damodaran, left behind two daughters viz., Savitri Ammal, wife of P. M. Elumalai and Padmavathi, wife of T. Rajaram. C D

4. The bequest was made in the name of testator's son viz., S. Damodaran to the exclusion of the testator's daughters in respect of the house in which the testator and his family were residing, situated at Premises No.10, Azeez Nagar II Street, Kodambakkam, Madras-24. The daughters of the testator had filed O.S. No. 5477 of 1990 on the file of IV Assistant City Civil Judge Court, Madras seeking partition of the said property. Therefore, it had become necessary for the plaintiffs to file the petition seeking Letters of Administration. E

5. Plaintiff-C.Saradambal averred that she would undertake to duly administer the estate of the deceased as per the will by paying the testator's debts and legacies and by making a full and true inventory thereof and exhibit the same in the Court. F

6. The daughters of the testator contested the said testament by filing a written statement. They averred that the will was fabricated and the signature of the testator in the said document was forged and the same was a got-up document by the plaintiff with the help of her husband's friends who were the attesting witnesses of the will. It averred that the attestors of the will had no association with the deceased testator, E. Srinivasa Pillai. The defendants contended that they looked after their father when he was on his deathbed. It was further contended that G H

A deceased testator E. Srinivasa Pillai had a paralytic attack and was unable to write or move. It was urged that the will had to be proved in accordance with law by removing all suspicious circumstances in connection with the execution of the same, to the satisfaction of the conscience of the Court. It was contended that the defendants had been deprived of intestate succession on account of the fraudulent and forged will.

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7. The defendants averred that their father died on 19th January, 1978, that their mother had predeceased him and their brother had also died in 1989. The defendants also averred that the first plaintiff got married to the brother of defendants on 07th June, 1970. The second and third plaintiffs were the daughters born out of the said wedlock. The first

C plaintiff willfully deserted her husband and had also filed a Matrimonial Petition bearing No. 136 of 1988, seeking dissolution of her marriage, by a decree of divorce but since defendants' brother died on 03rd June, 1989, the said petition for dissolution of marriage became infructuous. The defendants contended that the first plaintiff never cared for their

D brother. It was further contended that their brother, S. Damodaran had lived for eleven years after the death of their father and he had never disclosed about the execution of the will by their father.

8. The defendants had issued a legal notice dated 22nd June, 1989 to the plaintiff for partition and separate possession of their two-third

E share in the scheduled property and after waiting for a period of two and a half months, they had filed a suit for partition and separate possession of the said two-third share of the property.

9. It was further averred that the testator, E. Srinivasa Pillai was completely bedridden, incapable of writing and understanding anything

F for a period of ten months prior to his death. The name of the witnesses and the name of the person who had drafted the will were never disclosed. It was further averred that the testator E. Srinivasa Pillai was working in Binny and Company, Madras and was associated with well-educated and respectable people. That the petition seeking Letters of Administration was filed fifteen years after the death of the testator.

G Hence, the defendants sought for dismissal of the petition seeking Letters of Administration.

10. Having regard to the objections raised by the defendants, the Petition was converted into Testamentary Original Suit being T.O.S. No. 20 of 1994.

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11. The learned Trial Judge on the basis of the pleadings, framed the following issues for consideration:

"(1) Whether the will was executed by the testator while in a sound and disposing state of mind? And

(2) To what relief are the parties entitled?"

12. The learned Trial Judge dismissed the suit by judgment and decree dated 14th January, 2000 by answering the aforesaid issues against the plaintiffs.

13. Being aggrieved by the impugned judgment and decree passed by learned Trial Judge, the plaintiffs preferred an appeal being O.S.A. No. 470 of 2002 before the High Court. The Division Bench vide impugned judgment and decree dated 8th December, 2008, allowed the appeal and decreed the suit. Hence this appeal.

14. We have heard Mr. S. Vallinayagam, learned counsel for the appellants, Sri K. K. Mani, learned counsel for the respondents and perused the material on record.

15. Learned counsel for the appellants contended that the Division Bench of the High Court was not right in reversing the judgment of the learned Trial Judge of the said Court without assigning reasons for doing so and in that regard drew our attention to the impugned judgment. It was submitted that the learned Trial Judge had closely perused the evidence on record, both oral and documentary and had rightly dismissed the suit. However, the Division Bench of the High Court in the absence of any reasoning, had reversed the judgment of the learned Trial Judge.

16. It was next submitted that the testament, on the basis of which the respondents sought grant of Letters of Administration was concocted. The father of the appellants, namely, E. Srinivasa Pillai was bedridden prior to his death as he had sustained a paralytic stroke and was not in a position to sign or write and neither was he in a sound disposing state of mind. The appellants contended that he could not have even thought of making the bequest of the house in which he was residing, exclusively in favour of his son, S. Damodaran. They contended that the very execution of the will is shrouded in suspicious circumstances inasmuch as even the signature found on the controversial document is not that of the testator. Elaborating on the same, it was urged that the respondents had placed reliance on Exs.P2 and P3 to demonstrate that the signature on the said

documents tallied with the signatures of the testator on the will. However, even on a cursory glance of the said signatures it is apparent that they do not tally. It was submitted that the attempts of the respondents have been to knock off the house property as if it has been bequeathed to the husband of respondent No.1 and the father of the respondent No.2 and 3, to the exclusion of the appellants who are the daughters of the deceased testator. Elaborating the said contention, it was urged that the testator died within a period of fifteen (15) days after the so-called execution of the will i.e., 04th January, 1978 as the testator died on 19th January, 1978.

17. That the appellants herein had filed the suit for partition and separate possession of the house property being O.S. No.5477 of 1990 before the IV Assistant City Civil Court, Madras and in order to defeat the rights of the appellants herein in the house property, respondent No.1 had concocted the will of E. Srinivasa Pillai. The said document is a fabricated and forged document as it had not seen the light of the day for over fifteen years after the death of the testator and the petition seeking grant of Letters of Administration was filed only in order to seek the imprimatur of the Court on the said document.

18. It was further contended that the attestors of the so-called testament were not known to the deceased testator, they are in fact known to the first plaintiff i.e. respondent No.1 herein.

19. It was further urged that the very execution of the will is suspicious and therefore the learned Trial Judge had rightly dismissed the suit of the respondents herein. However, the Appellate Court simply reversed the judgment and decree passed by the learned Trial Judge without any reasoning. Hence, it was submitted that the impugned judgment and decree of the Division Bench of the Appellate Court may be set aside and the judgment and decree of the learned Trial Judge may be restored.

20. Per contra, learned counsel for the respondents-plaintiffs in the suit, drew our attention to the oral and documentary evidence on record and contended that the execution of the will had been proved in accordance with Section 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925. The Appellate Court was convinced about the factum of the execution of the will by the testator E. Srinivasa Pillai and the fact that there were no suspicious circumstances surrounding the execution of the will by the testator.

Therefore, the Appellate Court has rightly set aside the judgment and decree of the Trial Court. Hence, the same may be confirmed.

21. We have given our thoughtful consideration to the rival submissions made by the parties.

22. The question that arises for consideration is, whether, the Appellate Court was justified in setting aside the judgment and decree of the learned Trial Judge, thereby allowing the appeal filed by the plaintiffs-respondents herein and consequently, decreeing the suit filed by them.

23. The relationship between the parties is not in dispute. Deceased E. Srinivasa Pillai was the father of the husband of first plaintiff as well as the father of defendants being the daughters. It is also not in dispute that the testator died on 19th January, 1978. The controversy here is with regard to the succession to his estate. If he had died intestate, his son and daughters would have been entitled to succeed to his estate including the house property, equally. But the petition was filed seeking grant of Letters of Administration in favour of the plaintiffs, on the basis of the testament of the deceased, E. Srinivasa Pillai dated 04th January, 1978. It is also not in dispute that the said testament had not seen the light of the day for fifteen years and only after the filing of the suit for partition and separate possession by the appellants, i.e. the daughters of the testator herein, the respondents herein sought Letters of Administration on the basis of the will of deceased E. Srinivasa Pillai, which was said to be executed on 04th January, 1978.

24. Before proceeding to answer the point for determination in this appeal, it would be useful to cull out the relevant points from the judgment of the learned Trial Judge as well as the Division Bench of the High Court.

25. The learned Trial Judge had dismissed the suit despite the evidence of PW1, being the first plaintiff and PW2, being one of the attestors of the will (Ex-P1) after considering the same in detail and had noted the following aspects:

(i) The testator E. Srinivasa Pillai who is said to have executed the will (Ex-P1) on 04th January, 1978 had died 15 days later.

(ii) The will is an unregistered one.

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(iii) The testator's son, S. Damodaran was a practicing advocate.

(iv) The testator was also educated.

(v) That the testator was not in a sound and disposing state of mind as he was seriously ill and weak prior to his death, as he was suffering from a paralytic attack.

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(vi) PW2 had deposed in his evidence that the testator was suffering from a paralytic attack and was unable to move his right hand and right leg prior to his death and he was confined to the house for about ten months prior to his death and he was unable to write.

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(vii) The son of the testator was not aware of the execution of the will and he did not take any step for probate of the same.

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(viii) After the death of testator's son, S. Damodaran, his wife-plaintiff No.1, came forward to seek Letters of Administration.

(ix) There were proceedings for divorce between PW1 and her husband, S. Damodaran and she had also consented for divorce.

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(x) Though the person who wrote the will was known to the father-in-law of PW1, his name is not mentioned in the will nor does the will have any date mentioned in it.

(xi) The will (Ex-P1) had not seen the light of the day for nearly fifteen years although the testator's son was a practising advocate.

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(xii) PW2 admitted that PW1 was outside the room at the time of the execution of the will whereas PW1 stated that when the will (Ex-P1) was executed by her father-in-law she was present. So, there exists a discrepancy in the versions of evidences by PW1 and PW2.

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(xiii) PW2 had admitted that he had filed the affidavit on the request of the advocate and not on his own accord. Therefore, no weight could be attached to the evidence of PW2.

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(xiv) Daughters of the deceased had filed a partition suit being O.S. No. 5977 of 1990. It is only, thereafter, that proceedings were commenced by the plaintiffs for grant of Letters of Administration.

(xv) Since the testator was not healthy prior to his death and was suffering from paralysis, he was not in a position to write (sign). Hence, it is doubtful that he had executed the will.

(xvi) The attestator himself had admitted about the health condition of the testator by stating that he could not be taken to the Sub-Registrar's office for the registration of the will on account of the paralytic attack.

(xvii) Execution of the will is itself suspicious and the evidence regarding execution of the will has not dispelled the suspicious circumstances.

(xviii) The bequest is also questioned inasmuch as the daughters have no share in the house property.

26. In view of the aforesaid points, the learned Trial Judge dismissed the suit filed by the plaintiffs-respondents herein.

27. The Division Bench before whom the appeal was preferred, after observing that Section 68 of the Indian Evidence Act, 1872, has to be complied with to establish proof of the will, noted that only one of the attesting witnesses, namely, Varadan was examined as PW2, as the other attesting witness, namely, Dakshinamurthy was not alive to be examined so as to corroborate the genuineness of the will which is permissible in law.

28. In Paragraphs 8 to 11 of the judgment, the Division Bench of the High Court has observed as under:

"8. This Court has also verified the signatures of the testator in the will with those of the signatures available in the previous documents namely, Ex-P2 school Leaving Certificate, and Ex-P3, Building Plan. On verification, this Court has no hesitation to hold that the signatures available in the will are tallied with the signatures available in the School Leaving Certificate and the Building Plan. Though it is stated by the respondents that the legates filed matrimonial petition against the appellant, in the absence of

A any order thereon, this Court cannot give much importance to such proceedings. Also, the respondents filed a suit for partition of the suit property on the file of IV Assistant City Civil Court, Chennai, which is stated to be pending.

9. It is argued by the learned counsel for the respondents that
B there is an inordinate delay in initiating the proceedings for probate of the will. In this context, it is to be stated that the time taken and the reasons adduced for initiation of probate proceedings are the factors to be considered on the peculiar facts and circumstances of this case. Hence, the said argument fails.

C 10. The proof and validity of the will has to be examined on the settled propositions of law such as the evidence of the attestor, comparison of signatures of the testator, legal principles, intention of the testator and other circumstances. However, the learned single Judge proceeded on the sole ground that the will had not been probated for a long time. Therefore, the reasoning given by
D the learned single Judge cannot be sustained, as the legal principles are not properly follows.

11. For the foregoing reasons and in view of the discussion made above, the judgment of the learned single Judge is legally infirmed and the same is set aside. As such, this O.S.A. is allowed. No
E costs. Consequently, the connected C.M.P.No.9517 of 2006 and 1492 of 2008 are closed."

29. With the aforesaid observations, the judgment of the learned Trial Judge was reversed by the Division Bench.

F 30. Before considering the correctness of the impugned judgment of the Division Bench of the High Court, it would be useful to refer to the following judgments of this Court on proof of wills:

(a) One of the celebrated decisions of this Court on proof of a will, reported in AIR 1959 SC 443 is in the case of *H.Venkatachala Iyenger vs. B.N.Thimmajamma*, wherein this Court has clearly
G distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under:-

"18. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in
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deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

A In fact, the legal principles with regard to the proof of a will are no longer *res integra*. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. In the above noted case, this Court has stated that the following three aspects must be proved by a propounder:-

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> "(i) that the will was 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
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> (ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and
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> (iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounded can be taken to be discharged on proof of the essential facts indicated therein."

E (b) In *Jaswant Kaur v. Amrit Kaur and others* [1977 1 SCC 369], this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the defendant. What generally is an adversarial 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 let in by the

F propounder of the will is such as would satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will.

G (c) In *Bharpur Singh and others v. Shamsher Singh* [2009 (3) SCC 687], at Para 23, this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner:-

> "23. Suspicious circumstances like the following may be found to
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> H be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts."

It was further observed that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. 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.

(d) In Naranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, [(2006) 13 SCC 433], in Paras 34 to 37, this Court has observed as under:-

"34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Courts in

A *B.Venkatamuni v. C.J. Ayodhya Ram Singh* [(2006) 13 SCC 449], wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

B

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.

37. We may, however, hasten to add that there exists a distinction C where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion."

D

(e) This Court in Anil Kak v. Sharada Raje, [(2008) 7 SCC 695], held as under:-

"20. This Court in *Anil Kak v. Sharada Raje* opined that the court is required to adopt a rational approach and is furthermore E required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding:

52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious F circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the G court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

H

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation." A

(f) Similarly, in Leela Rajagopal and others v. Kamala Menon Cocharan and others, [(2014) 15 SCC 570], this Court opined as under:-

"13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us. B C D

31. In light of the aforesaid discussion, the validity of will (Ex-P1) said to be the last will and testament of deceased E. Srinivasa Pillai shall be considered. On a reading of will (Ex-P1), we note that immovable property bearing House No.6/1 Azeez Nagar, 2nd Street, Kodambakkam, Madras – 600024 and the building situate on it being about two grounds which was bought by the testator in the year 1953 is the subject matter of the bequest to his son S. Damodaran a practising advocate at Madras. The will further recites as under : E F

"I desire that this house should go to my son S. Damodaran and he must inherit without any conditions and I herein transfer it absolutely to him with all powers inclusive of disposing it off if necessary. No other person should have any claim over it. As I am sick and getting weak, I write and sign this will in the presence of these two witnesses who are present before me on this the 4th day of January, 1978 and put my signature in their presence." G

At this stage we note that the will itself recites that the testator was sick and getting weak. H

A 32. Learned counsel for the appellants has adumbrated on the following suspicious circumstances in the execution of the will. They can be succinctly stated as under:

(i) Date of the will and date of death of the testator being too close throws a doubt on the sound disposing state of mind
B of the testator.

(ii) Testator was bedridden prior to his death as he was suffering from paralysis.

(iii) Attestor (PW2) being known to the first plaintiff, the propounder of the will, but not to the deceased testator.
C

(iv) The husband of the first plaintiff and son of the testator, who was a practicing advocate, was unaware of the execution of the will during his lifetime.

(v) The signature on the will (Ex-P1) does not tally with the
D signatures of the testator on Ex-P2 (SSLC Register) and Ex-P3 (Extract of sanction plan).

(vi) The evidence of PW1 and PW2 is not credible.

(vii) There exists discrepancy in the evidence of PW1 and PW2.

(viii) That the respondents-plaintiffs have failed to prove the will
E to the satisfaction of the conscience of the Court and have not removed the suspicious circumstances in the execution of the will.

33. We shall now discuss each of the aforesaid aspects.

F (a) The date of the will (Ex-P1) is 04th January, 1978. The testator E. Srinivasa Pillai died on 19th January, 1978, within a period of fifteen days from the date of execution of the will. Even on reading of the will, it is noted that the testator himself has stated that he was sick and getting weak even then he is stated to have "written" the will himself which is
G not believable. It has been deposed by PW2, one of the attestors of the will, that the will could not be registered as the testator was unwell and in fact, he was bedridden. It has also come in evidence that the testator had suffered a paralytic stroke which had affected his speech, mobility of his right arm and right leg. He was bedridden for a period
H

of ten months prior to his death. Taking the aforesaid two circumstances into consideration, a doubt is created as to whether the testator was in a sound and disposing state of mind at the time of making of the testament which was fifteen days prior to his death.

(b) No evidence of the doctor who was treating the testator has been placed on record so as to prove that the testator was in a sound and disposing state at the time of the execution of the will.

(c) The fact that the testator died within a period of fifteen days from the date of the execution of the will, casts a doubt on the thinking capacity and the physical and mental faculties of the testator. The said suspicion in the mind of the Court has not been removed by the propounder of the will i.e. first plaintiff by producing any contra medical evidence or the evidence of the doctor who was treating the testator prior to his death.

(d) In this context, it would be useful to place reliance on Section 63 of the Indian Succession Act, 1925 which categorically states that the testator has to sign on the will and the signature of the testator must be such that it would "intend" thereby to give effect to the writing of a will. Hence, the genuineness of the will must be proved by proving the intention of the testator to make the testament and for that, all steps which are required to be taken for making a valid testament must be proved by placing concrete evidence before the Court. In the instant case, there is no evidence as to whom the testator gave instructions to, to write the will. The scribe has also not been examined. It is also not known as to whether the assistance of an advocate or any other trustworthy person was taken by the testator in order to make the testament and bequeath the property to only the son of the testator.

(e) Apart from that, Section 63(c) of the Indian Succession Act, 1925, firstly states that the will has to be attested by two or more witnesses/attestators, each of whom should have seen the testator sign on the will in his presence, or has received from the testator, a personal acknowledgment

of his signature on the will. Secondly, each of the witnesses shall sign on the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation is necessary. The aforesaid two mandatory requirements have to be complied with for a testament to be valid from the point of view of its execution. In the instant case, there are two attestors namely, PW2-Varadan and Dakshinmurthy and the latter had died. The evidence on record has to be as per Section 68 of the Indian Evidence Act, 1872 which deals with proof of documents which mandate attestation. In order to prove the execution of the document such as a testament, at least one of the attesting witnesses who had attested the same must be called to give evidence for the purpose of proof of its execution. Since one of the attestors, namely, Dakshinmurthy had died, PW2, Varadan had given his evidence as one of the attestors of the will. However, the deposition of PW2 is such that it is fatal to the case of the plaintiffs. The evidence of PW2 could be highlighted as under:

(i) He was a friend of the testator and he was frequently visiting the testator once in two or three days.

(ii) He signed as the first attesting witness on Ex-P1 and Dakshinmurthy signed as second attesting witness and the testator saw both the attestors signing Ex-P1. However, he has deposed that it was not possible to take the testator to the Registrar's office for registering the will as the testator was not in a sound condition and he was very seriously ill, he was suffering from paralysis.

(iii) He has admitted that testator was suffering from paralysis of right hand and right leg and prior to his death, was sick for about 10 months and was confined to his house and not in a position to write.

(iv) PW2 has also stated that he had not disclosed about the will to S. Damodaran, the son of the testator and during his lifetime, S. Damodaran was unaware of the will executed by his father.

(v) S. Damodaran, (who was a practicing advocate) lived for about eleven years after the execution of will (Ex-P1) and since he was unaware of the will executed by his father, he did not take steps to seek probate of the will.

(vi) He has also admitted that he signed the affidavit in the suit on the instructions and as requested by the counsel.

(f) The Trial Court has not believed the evidence of PW2. It is highly improbable that the only son of the testator who was a practicing advocate and on whom the bequest of the house was made, was unaware of the execution of the will by his father. It is unnatural that the father would not have disclosed to his only son about the bequest of the property, (particularly when the son was a practicing advocate) and had also not taken his son's assistance in the drafting as well as execution of the will.

(g) Learned counsel for the appellants has drawn our attention to the fact that the signature of the testator on the will (Ex-P1) does not tally with his signatures on Ex-P2 and Ex-P3. We have compared the said signatures. Even though the said signatures on the aforesaid documents have been made at different points of time, we find they are totally dissimilar inasmuch as the signatures on Ex-P2 and P3 do not resemble each other and the signature on the will (Ex-P1) is dissimilar to the signatures of testator on Ex-P2 and P3, particularly the letter 'E'. This fact raises a suspicion in the mind of this Court as to whether the signature on Ex-P1 was really that of the testator. Further if really the testator had himself written the will the fonts of the recital of the will and his signature do not at all match.

(h) It was also contended that the evidence of PW1, the propounder of the will, does not inspire confidence. We shall highlight the same:

(i) PW1 has stated that Ex-P1 was executed about fifteen days prior to the death of the testator who was her father-in-law and the same was in the

A custody of the testator. Ex-P1 has seen light of the day, only after the demise of the testator's son who was unaware of the will and during the pendency of the suit filed by the appellants herein seeking partition and separate possession of the property or the estate left behind by their father. There is no explanation regarding the custody of the will after the demise of the testator and for over fifteen years.

(ii) PW1 has stated that the will was kept in a secret place in her husband's almirah and that she took it out only after fifteen days of his death. This admission implies that only PW1 was aware of the execution of the will as well as the secret place where it was kept. If the will was in the custody of the testator as deposed by PW1, there is no explanation as to how the document found a place in the almirah belonging to her husband, particularly, when the testator was bedridden during the last few months (ten months) before his demise and was not in a position to move around.

(iii) PW1 has stated that the will was written by a person known to her father-in-law but the name of the person who wrote the will has not been mentioned therein. There is no mention of or evidence of the scribe of the will.

(iv) PW1 has also admitted that no date has been mentioned on top of the will. Thus, the date of the execution of the will has also not found a place on Ex-P1. This aspect also casts a doubt as to whether the will was executed by the testator during his lifetime.

(v) PW1 has stated that Ex-P1 was executed by her father-in-law and she was present when it was executed but PW2, the attestor has stated that PW1 was outside the room at the time of execution of the will.

In view of the above, we find much force in the submission of appellant's counsel.

(i) On the other hand, the evidence of DW1 in relation to the fact that the testator was not in a good health and he was suffering from a paralytic attack and was not in a position to write, is in corroboration with what PW2 has also admitted in his evidence, that the testator could not be taken to the sub-Registrar's office for the registration of the will as he was suffering from a paralytic stroke.

(j) It has also come in evidence that there was no cordial relationship between the first plaintiff and her husband S. Damodaran and in fact proceedings for dissolution of marriage were initiated which became infructuous on his demise.

34. For the aforesaid reasons, we hold that the respondents-plaintiffs have not been successful in proving the validity of the will in accordance with law inasmuch as the suspicious circumstances surrounding the very execution of the will have not been cleared by any cogent evidence, rather, the genuineness of Ex-P1 remains in doubt. It is observed that the will (Ex-P1) did not come into existence at the instance of the testator but it is a concocted document and has been got up after the demise of S. Damodaran.

35. In view of the aforesaid discussion, we hold that the respondents-plaintiffs have failed to prove the will (Ex-P1) in accordance with law inasmuch as they have not removed the suspicious circumstances, surrounding the execution of the will. Hence, Ex-P1, not being a valid document in the eye of law, no Letters of Administration can be granted to the respondents-plaintiffs.

36. In the circumstances, we hold that the learned Trial Judge was right in dismissing the suit. However, the Appellate Court being the Division Bench has reversed the judgment and decree passed by the Trial Court and has decreed the suit. On extracting the relevant portions of the judgment of the Appellate Court, which consists of eleven paragraphs, it is found that the same has been written in a cryptic manner. It is observed that the judgment could be brief and succinct if the Appellate Court is to dismiss an appeal and affirm the judgment and decree of the Trial Court. But when the judgment and decree of the Trial court is to be

A reversed then it is incumbent upon the Appellate Court to dwell into the matter in detail and to give reasons for reversing the same. Assigning reasons not only makes the judgment wholesome, but is also necessary in order to deduce and lead to just conclusions.

37. Before parting with this case, we would like to reiterate that
B in this case, the High Court has dealt with the judgment of the learned Trial Judge in a short cut method, bereft of all reasoning while reversing the judgment of the Trial Court both on facts as well as law. It is trite that the Appellate Court has jurisdiction to reverse, affirm or modify the findings and the judgment of the Trial Court. However, while reversing or modifying the judgment of a Trial Court, it is the duty of the Appellate
C Court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the Appellate Court. No doubt, when the Appellate Court affirms the judgment of a Trial Court, the reasoning need not to be elaborate although
D reappreciation of the evidence and reconsideration of the judgment of the Trial Court are necessary concomitants. But while reversing a judgment of a Trial Court, the Appellate Court must be more conscious of its duty in assigning the reasons for doing so.

38. In this regard, we may usefully rely upon a judgment of this
E Court in *Santosh Hazari v. Purushottam Tiwari (deceased) by LRs* - (2001) 3 SCC 179, wherein it has been observed that while writing a judgment of reversal, an Appellate Court must remain conscious of two principles. Firstly, the findings of facts based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence recorded by the same
F Presiding Judge who authors the judgment. If, on an appraisal of the evidence, it is found that the judgment of the Trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate Court is entitled to interfere with the finding of fact but by assigning cogent reasons for doing so. Otherwise, the
G findings of the Trial Court should not be interfered with lightly on a question of fact. Secondly, while reversing a finding of fact, it is necessary that the Appellate Court assigns its own reasons for doing so. This is especially so in case there are further appeals under Section 100 of the Code of Civil Procedure, 1908, as the first Appellate Court is the final court of facts and the said findings are immune from challenge in a second appeal.
H

39. In *B.V. Nagesh v. H.V. Sreenivasa Murthy – (2010) 13 SCC 530*, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle in these words : (SCC pp.530-31, paras 3-5) A

> "3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state : B
>
> (a) the points for determination; C
>
> (b) the decision thereon;
>
> (c) the reasons for the decision; and
>
> (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. D
>
> 4. the appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari – (2001) 3 SCC 179 at p.188 para 15 and Madhukar v. Sangram – (2001) 4 SCC 756 at p.758, para 5." E F G

40. To a similar effect, are the observation of this Court in *Vinod Kumar v. Gangadhar* - (2015) 1 SCC 391, wherein it has been observed that in a first appeal under Section 96 of the Code of Civil Procedure, 1908, the scope and powers conferred on the First Appellate Court are H

A delineated in Order XLI of the Code and grounds raised in the appeal, reappreciation of evidence adduced by the parties and application of the relevant legal principles and decided case law have to be considered while deciding whether the judgment of the Trial Court can be sustained or not.

B 41. It is also necessary to observe that the right to appeal is a creature of statute. The right to file an appeal by an unsuccessful party assailing the judgment of the Original Court is a valuable right and hence a duty is cast on the Appellate Court to adjudicate a first appeal both on questions of fact and applicable law. Hence, the reappreciation of evidence in light of the contentions raised by the respective parties and
C judicial precedent and the law applicable to the case have to be conscientiously dealt with.

42. In the instant case, the Division Bench of the High Court has simply reversed the judgment of the learned Trial Judge in the absence of reappreciation of evidence and without giving findings on questions of
D fact as well as on the applicable law and by not reasoning as to why the judgment of the learned Trial Judge was erroneous.

43. In the circumstances, we set aside the judgment and decree of the Division Bench of the High Court dated 08th December, 2008 in O.S.A 470 of 2002 and restore the judgment of the Learned Trial Judge
E passed in O.T.S No. 20/1994 dated 14th January, 2000 by allowing instant appeal.

44. Having regard to the relationship between the parties, they shall bear their respective costs.

F 45. Interlocutory applications, if any, stand disposed.

Devika Gujral Appeal allowed.