



M2K Advisors



Landmark decisions on the Validity of the Will

SUCCESSION PLANNING SERIES #20

1. Kavita Kanwar Vs Mrs Pamela Mehta & Others [SC] (Civil Appeal No. 3688 of 2017)

Issue : Thick clouds of suspicious circumstances are hovering over the Will and the Will looks unnatural and does not express the intention of the testator.

Background

The appellant Kavita applied for grant of probate in relation to the Will executed by her mother (testator) dated 20.05.2003 which was rejected both in the trial court and the High court. The appellant was the major beneficiary of the estate of the testator excluding the other legal heirs (one widowed sister and brother) who are the respondents of the case. The Will was partly holographic (handwritten by the testator) in a way that the first and the last portions of the Will were written by hand and the rest of the portions, which actually dealt with the devolvement of the property, were typed and printed.

Judgement

The court looked into the following facts - the relations between the testator and the respondents were cordial, the testator had not completed her education beyond Class X and was not computer literate, the Will had certain sections containing technical and legal jargons, the appellant could not explain why only certain portions were handwritten and remaining typed out and finally the statement of the appellant that she had not participated in the execution of the Will was wrong and contradictory. Hence the appeal was dismissed on the following grounds – the appellant misled the court by concealing the fact that she played an active part in the execution of the Will and arranging the witnesses, except for the opening and concluding paras, the entire Will is in electronic print and even the handwritten portions were not in the dictation of the testator.



2. Swarnalatha vs Kalavathy [SC] (Civil Appeal No.1565 of 2022)

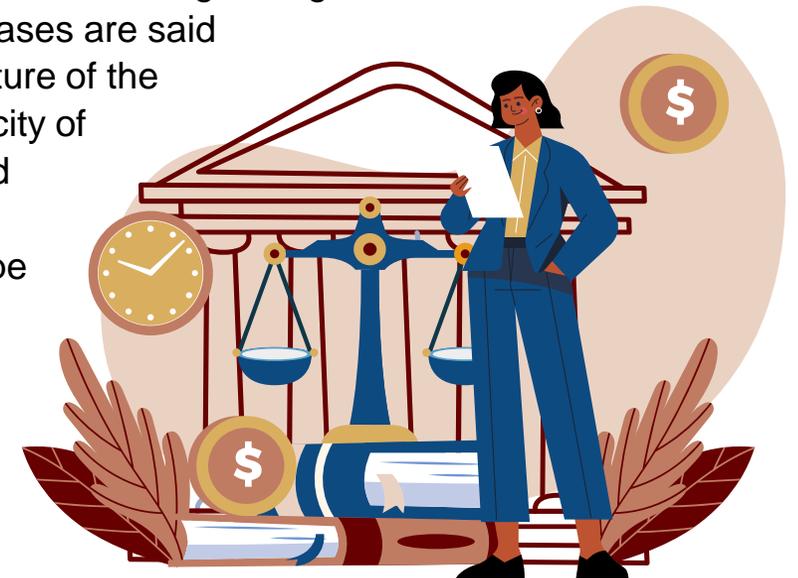
Issue : Is Will's genuineness based on whether the distribution was fair & equitable?

Background

Kalavathy, the daughter of the testators Mannar Reddy (father) and Adhilakshmiammal (mother) was excluded from both the Wills prepared by each of them individually. The legatees who are the wife and children of the eldest son (passed away) filed for a probate in the district court for the both the Wills. The district court granted the probate and this was challenged by Kalavathy in the High court citing that total exclusion of the daughter from the bequest are grounds of suspicious circumstances. The High court allowed the appeal and this was appealed by the legatees in the Supreme Court.

Judgement

The Supreme Court stated that this is not a case where the testators were not in a sound and disposing state of mind. Further, mere exclusion of natural heirs cannot be a ground to hold suspicious circumstances. In addition, the reasons given in the Will are convincing enough to show the exclusion happened in a natural way. Cases are said to be suspicious where either the signature of the testator is disputed, or the mental capacity of the testator is questioned. Finally, it held that for the purpose of testing the genuineness of the Will there is no scope for the court to see whether the distribution made in the Will was fair and equitable to all the children and the appeal was dismissed.



3. Smt. Narayanamma and Others Vs. Smt. Mayamma and Another (ILR 1999 KAR 2456, 1999 (5) Kar LJ 694)

Issue : Is the Will valid in the absence of clear reasons for excluding natural heirs?

Background

Muni Chowdappa (testator) left behind a Will bequeathing his entire properties to his last daughter (plaintiff) excluding his other two daughters (defendants). The Will was denied by the defendants raising a contention that their father was not in a sound disposing state of mind and body. The validity of the Will was not proven and hence the case was dismissed by the trial court and first appellate court. Subsequently the last daughter filed an appeal in the High Court that the Will is valid.

Judgement

It was held that when one of the legal heirs is excluded from succeeding to the property of the testator, the Court should be cautious in giving its consent to the validity of the Will. There should be a specific reason given in the Will for such exclusion and such reason should be probable, acceptable and testable in any Court of law. In the instant case, one of the daughters alone is preferred when the other two daughters are living and no reason was mentioned for choosing one of the daughters to the exclusion of the two other daughters. Further, the Court came to conclusion on the basis of grounds of dismissal by trial court and first appellate court that the plaintiff and her husband were residing along with her father and they were managing the affairs of the family and therefore, this has given a scope for the plaintiff to get this Will from her father exclusively to herself. Hence, the Will was considered to be invalid.



4. Sridevi & Others Vs Jayaraja Shetty & Others [SC] (Appeal (Civil) 3749 of 1999)

Issue : Whether the Will dated 28.3.1976 executed by Late Padmayya Kambali is true, valid and was executed by him in sound and disposing state of mind?

Background

Padmayya Kambali the testator had four sons and three daughters. He passed away on 13/04/1976. He had executed a Will dated 28/03/1976 but the Will was registered on 11.9.1980 only. The appellants on the case are the two daughters and the grand-daughter through the third daughter who has died and the respondents are grandchildren of the testator through his three sons and his 4th son.

Judgement

The due execution of the Will had been proved by the testimony of the scribe and the two attesting witnesses coupled with the testimony of the hand-writing expert. The witnesses state that the Will had been executed in their presence and the testator signed the same while in sound disposing mind. With respect to the suspicious circumstances surrounding the Will, except for the reason that the deceased is 80 years of age and that he died within 15 days of the execution of the Will, there is nothing on record to show that the testator was not in good health. Further, the reasons for unequal distribution are mentioned in the Will itself. Also, for the argument that 4th son had taken prominent part in the execution of the Will as he was present in the house at the time of the alleged execution of the Will the court did not find any merit apart from establishing his presence in the house. In addition, both the attesting witnesses have stated that the daughters were also present at the time of the execution hence it can reasonably be inferred that they had knowledge about the execution of the Will. The same was also not controverted by either of the daughters. Thus, the appeal was dismissed.



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