[2023] 16 S.C.R. 644 : 2023 INSC 1004

CASE DETAILS

MOTURU NALINI KANTH

v.

GAINEDI KALIPRASAD (DEAD, THROUGH LRS.)

(Civil Appeal No. 2435 of 2010)

NOVEMBER 20, 2023

[C.T. RAVIKUMAR AND SANJAY KUMAR, JJ.]

HEADNOTES

Issue for consideration: Suit filed by the appellant (then a minor) through his guardian claiming right and title over the properties of late 'V', who as per his claim had adopted him, under a registered Will. Trial Court decreed the suit. High Court whether justified in allowing the appeal filed by V's grandson, 'GK'.

Evidence Act, 1872 – ss.68, 69 – Legal requirements to prove a Will – Suit was filed by the appellant, through his guardian, for declaration of his title to the suit properties belonging to late 'V' and for recovery of their possession from V's grandson-'GK' (who was her grandson through her deceased daughter) – It was his case that he was adopted by 'V' by a registered Adoption Deed – Appellant was the son of V's brother's son – As per him 'V' had executed registered Will bequeathing all her properties to him and canceled her earlier Will, executed in favour of 'GK' – Trial Court held in favour of the appellant – Decision reversed by High Court:

Held: For the purposes of s.69, it is not enough to merely examine a random witness who asserts that he saw the attesting witness affix his signature in the Will – The very purpose and objective of insisting upon examination of at least one attesting witness to the Will would be entirely lost if such requirement is whittled down to just having a stray witness depose that he saw the attesting witness sign the Will – Neither of the attesting witnesses to the Will were examined before the Trial Court, in compliance with s.68 – Therefore, s.69 could have been made use of to prove the Will but no witness was examined who

was familiar with the signature of either of the attesting witnesses and who could vouch for the same or produce an admitted signature before the Trial Court – Will not proved in accordance with law and has no legal consequence – Disowning of her own grandson by 'V' under Will is a suspicious circumstance that remained unexplained – Too many suspicious circumstances surrounding the Will make it very difficult to accept and act upon the same, even if it had been proved as per law – Further, adoption of the appellant is not proved in accordance with law despite the registration of Adoption Deed – On facts, the very adoption, itself, is not believable, given the multitude of suspicious circumstances surrounding it – Therefore, appellant cannot be treated as V's heir by adoption thus, not entitled to claim any right or share in her properties – Findings of the High Court to that effect, albeit for reasons altogether different, do not warrant interference – Judgment of the High Court confirmed – Indian Succession Act, 1925 – s.63 – Hindu Adoptions and Maintenance Act, 1956 – s.16. [Paras 30, 32, 55]

Hindu Adoptions and Maintenance Act, 1956 – ss.16, 11 – Presumption u/s.16 in favour of a registered document relating to adoption, rebuttable – Appellant claimed a half-share in V's properties relying on the adoption ceremony and the registered Adoption Deed:

Held: The presumption is rebuttable – On facts, the adoption ceremony and the Adoption Deed are shrouded with equally suspicious circumstances – As the Adoption Deed was registered, the presumption u/s.16 attached to it and it was for 'GK' (V's grandson) to rebut that presumption, who did so more than sufficiently – Mere registration of the Adoption Deed did not absolve the person asserting such adoption from proving that fact by cogent evidence and the person contesting it from adducing evidence to the contrary – It is in this respect that various suspicious circumstances attached to the adoption ceremony of assume significance – The actual 'giving and taking' of the child in adoption, is an essential requisite u/s.11(vi) however, there is no convincing evidence of that 'act' also in the case on hand – There are no pictures of the actual 'giving and taking' of the child in adoption. [Paras 35, 46 and 50]

LIST OF CITATIONS AND OTHER REFERENCES

Ashutosh Samanta (Dead) by LRs. And others vs. SM. Ranjan Bala Dasi and others (2023) SCC OnLine SC 255; *Ved Mitra Verma vs. Dharam Deo Verma* (2014) 15 SCC 578 – distinguished.

Janki Narayan Bhoir vs. Narayan Namdeo Kadam (2003) 2 SCC 91: [2002] 5 Suppl. SCR 175; *Ramesh Verma (Dead) through LRs . vs. Lajesh Saxena (Dead) by LRs . and another* (2017) 1 SCC 257; *H. Venkatachala Iyengar vs. B.N. Thimmajamma and others* AIR 1959 SC 443: [1959] Suppl. SCR 426; *Jagdish Chand Sharma vs. Narain Singh Saini through LRs. and others* (2015) 8 SCC 615: [2015] 6 SCR 397; *Bhagat Ram and another vs. Suresh and others* (2003) 12 SCC 35: [2003] 6 Suppl. SCR 216; *Benga Behera and another vs. Braja Kishore Nanda and others* (2007) 9 SCC 728: [2007] 6 SCR 853 – relied on.

Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria and others (2008) 15 SCC 365: [2008] 17 SCR 1500; *Apoline D' Souza vs. John D' Souza* (2007) 7 SCC 225: [2007] 6 SCR 1103; *Naresh Charan Das Gupta vs. Paresh Charan Das Gupta* AIR 1955 SC 363: [1955] SCR 1035; *Bhagavathiammal vs. Marimuthu Ammal and others* 2010 (2) Madras Weekly Notes (Civil) 704; *G. Vasu vs. Syed Yaseen Sifuddin Quadri* AIR 1987 Andhra Pradesh 139; *Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal* (1999) 3 SCC 35: [1999] 1 SCR 704; *Laxmibai (Dead) through LRs. and another vs. Bhagwantbuva (Dead) through LRs . And others* (2013) 4 SCC 97: [2013] 1 SCR 632; *Kishori Lal vs. Mst. Chaltibai* AIR 1959 SC 504: [1959] Suppl. SCR 698; *Jai Singh vs. Shakuntala* (2002) 3 SCC 634; *Mst. Deu and others vs. Laxmi Narayan and others (1998) 8 SCC 701; Lakshman Singh Kothari vs. Rup Kanwar (Smt) alias Rup Kanwar Bai* AIR 1961 SC 1378: [1962] SCR 477; *M. Vanaja vs. M. Sarla Devi (Dead)* (2020) 5 SCC 307 – referred to.

Govinda vs. Chimabai and others AIR 1968 Mysore 309; *Padmalav Achariya and another vs. Srimatyia Fakira Debya and others* AIR 1931 Privy Council 81; *Dhanno wd/o Balbir Singh vs. Tuhi Ram (Died) represented by his LRs.*AIR 1996 P & H – referred to..

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2435 of 2010.

From the Judgment and Order dated 11.12.2006 of the High Court of A. P. at Hyderabad in AS No.2695 of 1989.

Appearances:

Basant R., Sr. Adv., Y. Raja Gopala Rao, Akshay Sahay, Ms. Y. Vismai Rao, Y. Ramesh, Dhuli Gopi Krishna, Aarsh Thakkar, Sharat Gopal, Advs. for the Appellant.

Thomas P. Joseph, Sr. Adv., M/s Devasa & Co., Shekhar G. Devasa, Manish Tiwari, Thasmitha Muthanna, Tinny Thomas, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJAY KUMAR, J.

1. Moturu Nalini Kanth, then a minor, claimed absolute right and title over the properties of late Venkubayamma under registered Will Deed dated 03.05.1982. It was also claimed that he was adopted by her, as evidenced by registered Adoption Deed dated 20.04.1982. Nalini Kanth was not even a year old at that time, as he was born on 10.07.1981. O.S. No. 113 of 1983 was filed by Nalini Kanth, through his guardian, for declaratory and consequential reliefs in respect of Venkubayamma's properties. The learned Principal Subordinate Judge, Srikakulam, held in his favour, *vide* judgment dated 30.09.1989, and decreed the suit. However, in appeal, the High Court of Andhra Pradesh held against Nalini Kanth, *vide* judgment dated 11.12.2006, and allowed Appeal Suit No. 2695 of 1989 filed by Gainedi Kaliprasad, Venkubayamma's grandson through her deceased daughter, Varalaxmi. Hence, this appeal by Nalini Kanth.

2. Nalini Kanth's prayer in O.S. No. 113 of 1983 before the learned Principal Subordinate Judge, Srikakulam, filed through his guardian, was for declaration of his title to the suit properties that had belonged to

Venkubayamma and for recovery of their possession from Kaliprasad, defendant No.1. His case was that he was adopted by Venkubayamma on 18.04.1982 at Sri Sri Raghunadha Swamy Temple at Bhapur in Berhampur City, Ganjam District, Orissa (presently, Odisha). It was claimed that the Adoption Deed (Ex. A9) was executed on 20.04.1982 and it was registered on the same day. It was signed by his natural parents who gave him in adoption and also by his adoptive mother. Thereafter, Venkubayamma executed registered Will Deed dated 03.05.1982 (Ex. A10) in a sound state of mind bequeathing all her properties to him. Thereby, Venkubayamma also canceled her earlier Will Deed dated 26.05.1981 (Ex. A19), executed in favour of Kaliprasad, her grandson. Under Ex. A10 Will, Venkubayamma appointed Pasupuleti Anasuya (PW 1) as the executor of the Will and also as the guardian of Nalini Kanth, in the event she died during his minority. In fact, Venkubayamma died just two months later, on 26.07.1982. Defendants No. 2 to 12 in the suit were Venkubayamma's tenants. As disputes arose between Pasupuleti Anasuya, Nalini Kanth's guardian, and Kaliprasad as to who was entitled to receive the rents, the suit in O.S. No. 113 of 1983 came to be filed by her on his behalf.

3. The suit was contested by Kaliprasad. He challenged the Adoption Deed as well as the Will Deed, under which Nalini Kanth claimed rights. He alleged that Venkubayamma was a resident of Srikakulam and was very old in 1982. According to him, she was senile and was not in a position to exercise free will and consciousness. He asserted that the adoption was not true, valid or binding on him. He contended that Ex. A10 Will was invalid as it was not properly attested. He claimed that Venkubayamma had brought him up and got his marriage performed and that she had always treated him as her sole heir and successor.

4. The Trial Court settled the following issues for consideration:

> '1.Whether the plaintiff is the adopted son of Venkubayamma and the Adoption Deed dated 19.04.1982 (*sic*) is true?
>
> 2. Whether the registered Will dated 03.05.1982 executed by late Venkubayamma is true and valid?
>
> 3. Whether the plaintiff is entitled to the possession of the suit properties?
>
> 4. To what relief?'

5. PWs 1 to 15 were examined for the plaintiff, Nalini Kanth, by his guardian. Ex. A1 to A25 were marked on his behalf. Kaliprasad examined himself as DW 1. He also examined DWs 2 and 3 but did not adduce any documentary evidence. Exs. C1 & C2 and Exs. X1 & X2 were also made part of the record. Ex C1 is the affidavit dated 16.09.1982 of Balaga Sivanarayana Rao, stating that he had scribed Ex. A10 Will Deed. It was attested by B. Prasada Rao, Advocate. Ex. C2 is stated to be the affidavit dated 16.09.1982 of Pydi Appala Suranna, an attesting witness to Ex. A10 Will Deed. It was attested by K. V. Ramanayya, Advocate. Exs. X1 and X2, as per the version of Nalini Kanth's guardian, are the thumb marks of Venkubayamma but this is disputed by Kaliprasad.

6. At this stage, we may note that the contesting parties are all related to Venkubayamma. Kaliprasad, as stated earlier, is the son of her predeceased daughter, Varalaxmi. Nalini Kanth is the son of her brother's son, viz., P. Panduranga Rao. Pasupuleti Anasuya, the guardian, is P. Panduranga Rao's elder sister and the paternal aunt of Nalini Kanth.

7. Deposing as PW 1, Pasupuleti Anasuya stated as follows: Venkubayamma had extended an invitation to attend the adoption of Nalini Kanth. Ex. A1 is the invitation. The adoption took place at Raghunadha Swamy Temple, Berhampur, at 10 am on 18.04.1982 and all their relations and friends attended the ceremony. All the customary rituals for adoption took place and the natural parents physically handed over the child to Venkubayamma but she, herself, was not present when the child was physically handed over. Exs. A2 to A4 photographs were taken at that time. Exs. A5 to A7 are the negatives thereof. Ex. A8 cash receipt was issued by the photographer, Sunkara Papa Rao. The Adoption Deed dated 20.04.1982 is Ex. A9. Venkubayamma executed a registered Will on 03.05.1982 and it is Ex. A10. She was in a sound and disposing state of mind till her death. Venkubayamma gave necessary instructions to the scribe for writing Ex. A10 Will and she went with her to the Sub-Registrar's office. In her cross-examination, PW1 admitted that she was not there in any of the photos (Exs. A2 to A4). She denied the suggestion that Venkubayamma was not at all present in those photographs and that she never adopted Nalini Kanth by executing Ex. A9 Adoption Deed.

8. P. Panduranga Rao, the natural father of Nalini Kanth, deposed as PW 2. He stated that Venkubayamma was his father's sister and that he, along with his wife, gave their second son, Nalini Kanth, in adoption to her. He said that the adoption ceremony took place on 18.04.1982 and Ex. A1 was the invitation printed on that occasion. He also spoke of Exs. A2 to A4 photographs and asserted that the child was handed over by him and his wife to Venkubayamma in adoption. He admitted his signature in the Adoption Deed (Ex. A9). In his cross-examination, PW 2 admitted that Venkubayamma brought up Kaliprasad from childhood, got him educated and performed his marriage. He also admitted that none of the relatives of Venkubayamma residing at Srikakulam attended the adoption ceremony. He also stated that Kaliprasad was residing in the house of Venkubayamma at the time of Nalini Kanth's adoption in 1982.

9. PW 3 is one of the attestors of Ex. A9 Adoption Deed and he is the brother of PWs 1 and 2. According to him, the other attesting witness to the document as well as the scribe thereof had expired. He stated that all the rituals had taken place at the time of adoption and the ceremonies were conducted at Raghunadha Swamy Temple at Berhampur at 10 am. He also spoke of Exs. A2 to A4 photographs being taken at that time. He further stated that the adoption was registered at Berhampur on 20.04.1982. PW 4 is the photographer who took Exs. A2 to A4 photographs, which were marked along with Exs. A5 to A7 negatives and Ex. A8 receipt by PW 1.

10. PW 5, an Advocate, was examined to identify Venkubayamma in the photographs, as he claimed to be a distant relative. He stated that the woman in Ex. A3 photograph, wearing spectacles, was Venkubayamma and that she was also seen in Ex. A2 photograph. He stated that in Ex. A4 photograph, she was seen holding a child in her lap. He stated in his cross-examination that Kaliprasad was with Venkubayamma since ten years.

11. PW 6 is the document-writer who scribed Ex. A10 Will Deed. He said that he knew Pydi Appala Suranna, one of the attestors thereto, but he was no more. He stated that he did not know the other attestor. He claimed that he had known Venkubayamma for about 5 or 6 years. He admitted that Ex. C1 was in his handwriting and bore his signature. He also admitted that Ex. C2 was in his handwriting and claimed that Pydi

Appala Suranna had signed therein. He said that he was not present when Venkubayamma signed Ex. A10 Will. Thereupon, he was cross-examined by the plaintiff's counsel. In the course of such cross-examination, he stated that he wrote Ex. C1 affidavit at the dictation of the plaintiff's counsel at his house. He further stated that he did not see who exactly signed in Ex. A10 Will Deed. A woman was stated to be sitting at a distance but he did not know if she was Venkubayamma and whether she signed the document. He stated that the prior Will of Venkubayamma dated 26.05.1981 (Ex. A19) was also written by him and Venkubayamma had signed the same in his presence. He further stated that he told the plaintiff's counsel that, as he did not see Venkubayamma signing the Will, he would not sign the affidavit. However, the plaintiff's counsel persuaded him to sign it, saying that he need not worry about it and that there would be no consequences. He claimed that some lady from Berhampur who was a relation of Venkubayamma brought the earlier Will to him and he mentioned the date of the said Will in Ex. A10 Will. In his cross-examination by the defence, PW 6 stated that while he was in the Registrar's office attending to some work, a lady from Berhampur came to him and on that day, the document was written. He further stated that he knew Venkubayamma but she did not come to him on that day. The woman who came from Berhampur gave all the information to write the document and the recital in the Will that the plaintiff's adoption took place in the house of his natural parents in Chandramanipeta of Berhampur town was made only on the instructions given by the woman. The other particulars mentioned in the Will were also stated to have been given by the same woman. After the writing of the document, according to PW 6, Venkubayamma and the witnesses did not come to him and he did not go to them. He stated that they took the written Will saying that Venkubayamma could herself read the document. He further stated that Pydi Appala Suranna, one of the attestors, also did not sign before him. He also said that he could not say whether the signature in Ex. A10 was that of Pydi Appala Suranna. In his further cross-examination by the plaintiff's counsel, PW 6 denied the suggestion that he was told that the adoption took place at Raghunadha Swamy Temple and the other formal ceremonies were performed at the natural parents' house but he omitted to write that the adoption took place at the temple.

12. PW 7 is the purohit who is stated to have performed the adoption ceremonies. He stated that his native place was Berhampur and he was doing pourohityam since about 12 years. He stated that he was the purohit for the family of P. Panduranga Rao (PW 2). He further stated that he knew Venkubayamma as she used to visit her parents' house. He stated that he had performed pourohityam at the time of the adoption. He claimed that the adoption ceremony took place in Raghunadha Swamy Temple and *datta homam* was also performed. He further claimed that after the *datta homam,* the child was physically handed over to the adoptive mother by the parents and photos were taken on that occasion. He identified himself along with the adoptive mother, the natural parents and the child in Ex. A2 and Ex. A3 photographs. He further stated that after the official adoption was over at the temple, they worshipped their personal deity at home. PW 7 stated in his cross-examination that he used to see Venkubayamma once or twice a year at her parents' house in Chandramanipeta. He was questioned about certain ceremonies in the context of adoption and stated that he had not performed the same. He denied the suggestion that the woman in Exs. A2 to A4 photographs was not Venkubayamma. He, however, stated that Raghunadha Swamy Temple was in Chandramanipeta and Ramalingeshwara and Mukteshwara Temples were in Bhapur.

13. PW 8 is the Advocate who attested Ex. C1 affidavit. PW9 is the Sub-Registrar at Chodavaram who registered Ex. A19 Will. He stated in his cross-examination that he did not know Venkubayamma personally and that the identifying witnesses told him that the executant was Venkubayamma. He said that the executant also stated her name to him. PW 10 was a Director of the Finger Prints Bureau at Madras. His evidence was that the thumb prints in the Adoption Deed and the Will Deed were identical to the thumb print of Venkubayamma in the Sub-Registrar's record pertaining to Ex. A19 Will. PW 11 was from the Registration Department at Kurnool and spoke of Venkubayamma affixing her thumb print in Ex. A10 Will in his presence. However, in his cross-examination, PW 11 admitted that he did not know her personally and relied only on the identifying witnesses. He also could not say what the age of the said executant was, due to lapse of time. PW 12, an Advocate at Srikakulam, stated that he knew Venkubayamma, who was a client of his father and, thereafter, himself. He further stated that he could identify her and claimed that the woman, wearing glasses and holding

a child, in Exs. A2 and A3 photographs, was Venkubayamma. He admitted in his cross-examination that, though Venkubayamma was about 70 years of age in 1970, she did not appear to be of that age in the photographs. He did not know when she died but stated that she died by 1985.

14. PW 13 is the Advocate who attested Ex. C2 affidavit. He admitted in his cross-examination that he previously did not know Pydi Appala Suranna, the deponent thereto. PW 14 was an invitee to the adoption ceremony at Berhampur. He claimed to be in Ex. A4 photograph. However, in his cross-examination, he admitted that Venkubayamma must have been about 65 to 70 years old but the lady in Ex. A4 photograph was about 45 years of age. He also admitted that he was only acquainted with PW 2, the natural father of the adopted child, and that he had no relationship or friendship either with Venkubayamma or her husband and except by way of PW 2's introduction that she was Venkubayamma, he had no other source of information. PW 15 was an identifying witness in Ex. A10 Will. According to him, Pydi Appala Suranna and a person, whose name he did not know, attested Ex. A10 Will on the Sub-Registrar's Office verandah. He claimed he was present when the attestors and the scribe signed on Ex. A10. He said that he could identify Venkubayamma and claimed that she was the third person, wearing spectacles, in Ex. A2 photograph. He identified her as the woman sitting, wearing glasses, with a baby in her lap, in Ex. A3. He also identified her in Ex. A4. He asserted that he knew Venkubayamma for the last 10 years but he did not know any other details or when she died.

15. Kaliprasad deposed as DW 1. He stated that Venkubayamma was his mother's mother and asserted that she never adopted any boy during her lifetime. He asserted that Venkubayamma only had one daughter and he was the son of that daughter. He claimed to be the sole heir to the properties of late Venkubayamma. He claimed that since childhood, he was brought up in Venkubayamma's house and that his marriage was performed by her in February, 1982. According to him, Venkubayamma was between 75 to 80 years of age at the time of her death. He said that she told him about a Will in his favour after his marriage but he had not seen the document. He denied that she had adopted a boy. According to him, she went to Srikakulam till the second week of July, 1982, and after that, she wanted to go to her relations' houses at Vizianagaram, Berhampur and Khurda Road. He further stated that, by the time he attained the age of discretion, Venkubayamma's hair had

turned grey and asserted that it was false that Exs. A2 to A4 photographs were of Venkubayamma. He stated that she used to write letters to him whenever she was in camp and he was, therefore, acquainted with her signature and handwriting. He stated that Ex. A9 Adoption Deed did not bear the signature of Venkubayamma. He further stated that Exs. X1 and X2 were not the thumb marks of Venkubayamma. He denied the suggestion that Venkubayamma had adopted Nalini Kanth and had executed a Will, whereby he would be entitled to her properties.

16. In his cross-examination, Kaliprasad stated that he did not have any photograph of Venkubayamma. He denied the suggestion that she used to apply hair dye. He also denied that the woman in Exs. A2 and A3 photographs was Venkubayamma. According to him, Venkubayamma used to write letters to him while he was at Hyderabad and she was in the habit of signing in English using disjointed letters. He admitted that some of her letters were signed in Telugu but a few were signed in English. He asserted that the signatures in Ex. A10 were not that of Venkubayamma and denied that the thumb marks (Exs. X1 and X2) were of Venkubayamma.

17. As already noted *supra*, the Trial Court held in favour of Nalini Kanth but, in appeal, the High Court reversed that decision. In essence, this case would turn upon the validity of Ex. A10 Will. Further, the validity of Ex. A9 Adoption Deed would also require examination. In the event Ex. A10 Will is found to be valid, Nalini Kanth would be the sole heir thereunder, but if it is held to be invalid and Ex. A9 Adoption Deed is found to be valid, he would be an heir, as an adopted son, along with Kaliprasad, the grandson. He would then be entitled to a half-share in the suit properties.

18. First and foremost, we may note the essential legal requirements to prove a Will. Section 63 of the Indian Succession Act, 1925 (for brevity, 'the Succession Act'), prescribes the mode and method of proving a Will and, to the extent relevant, it reads as under: -

> **"63. Execution of unprivileged Wills.** - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules: -
>
> (a). …….

(b). …….

(c). The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign 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 shall be necessary."

19. In turn, Sections 68 and 69 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), read as under:

'68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until 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:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

Section 69. Proof where no attesting witness found. – If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.**'**

20. Trite to state, mere registration of a Will does not attach to it a stamp of validity and it must still be proved in terms of the above legal mandate. In ***Janki Narayan Bhoir vs. Narayan Namdeo Kadam[1],*** this Court held that the requirements in clauses (a), (b) and (c) of Section 63 of

1 (2003) 2 SCC 91

the Succession Act have to be complied with to prove a Will and the most important point is that the Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will or must have seen some other person sign the Will in the presence of and by the direction of the testator or must have received from the testator a personal acknowledgment of his signature or mark or of the signature or mark of such other person and each of the witnesses has to sign the Will in the presence of the testator. It was further held that, a person propounding a Will has got to prove that it was duly and validly executed and that cannot be done by simply proving that the signature on the Will was that of the testator, as the propounder must also prove that the attestations were made properly, as required by Section 63(c) of the Succession Act. These principles were affirmed in ***Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria and others***[2]**.**

21. More recently, in ***Ramesh Verma (Dead) through LRs. vs. Lajesh Saxena (Dead) by LRs. and another***[3], this Court observed that a Will, like any other document, is to be proved in terms of the provisions of the Evidence Act. It was held that the propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document of his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. It was noted that this is the mandate of Section 68 of the Evidence Act and the position would remain the same even when the opposite party does not deny the execution of the Will.

22. Long ago, in ***H. Venkatachala Iyengar vs. B.N. Thimmajamma and others***[4]**,** a 3-Judge Bench of this Court noted that there is an important feature which distinguishes Wills from other documents as, unlike other documents, a Will speaks from the death of the testator and, therefore, when it is propounded or produced before a Court, the testator who has already departed from the world cannot say whether it is his Will or not.

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2 (2008) 15 SCC 365
3 (2017) 1 SCC 257
4 AIR 1959 SC 443

It was held that the onus on the propounder to prove the Will can be taken to be discharged on proof of the essential facts, such as, that the Will was signed by the testator; that the testator at the relevant time was in a sound and disposing state of mind; that he understood the nature and effect of the dispositions; and that he put his signature to the document of his own free will. It was, however, noted by the Bench that there may be cases in which the execution of the Will is surrounded by suspicious circumstances and the same would naturally tend to make the initial onus very heavy and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator.

23. Again, in ***Jagdish Chand Sharma vs. Narain Singh Saini (Dead) through LRs. and others***[5]**,** this Court held as under:

> '57. A will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer res integra, that it carries with it an overwhelming element of sanctity. As understandably, the testator/testatrix, as the case may be, at the time of testing the document for its validity, would not be available, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. This is more so, as many a times, the manner of dispensation is in stark departure from the prescribed canons of devolution of property to the heirs and legal representatives of the deceased. The rigour of Section 63(*c*) of the Act and Section 68 of the 1872 Act is thus befitting the underlying exigency to secure against any self-serving intervention contrary to the last wishes of the executor.
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> 57.1. Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation. The two contingencies permitting the play of this provision, namely, denial or failure to recollect the execution by the attesting witness produced, thus a fortiori has to be extended a meaning to ensure that the limited liberty granted by Section 71 of the 1872 Act does not in any manner efface or emasculate the essence and efficacy of Section 63 of the Act and

5 (2015) 8 SCC 615

Section 68 of the 1872 Act. The distinction between failure on the part of an attesting witness to prove the execution and attestation of a will and his or her denial of the said event or failure to recollect the same, has to be essentially maintained. Any unwarranted indulgence, permitting extra liberal flexibility to these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose. The propounder can be initiated to the benefit of Section 71 of the 1872 Act only if the attesting witness/witnesses, who is/are alive and is/are produced and in clear terms either denies/deny the execution of the document or cannot recollect the said incident.'

24. Earlier, in ***Bhagat Ram and another vs. Suresh and others***[6]**,** this Court observed as under:

'12. According to Section 68 of the Evidence Act, 1872, a document required by law to be attested, which a Will is, shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if available to depose and amenable to the process of the court. The *proviso* inserted in Section 68 by Act 31 of 1926 dispenses with the mandatory requirement of calling an attesting witness in proof of the execution of any document to which Section 68 applies if it has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution by the person by whom it purports to have been executed is specifically denied. However, a Will is excepted from the operation of the *proviso*. A Will has to be proved as required by the main part of Section 68.'

25. Thereafter, in ***Benga Behera and another vs. Braja Kishore Nanda and others***[7]**,** this Court held thus:

'40. It is now well settled that requirement of the proof of execution of a will is the same as in case of certain other documents, for example gift or mortgage. The law requires that the proof of execution of a will has to be attested at least by two witnesses. At least one attesting witness has to be examined to prove execution and attestation of the will.

6 (2003) 12 SCC 35
7 (2007) 9 SCC 728

Further, it is to be proved that the executant had signed and/or given his thumb impression in presence of at least two attesting witnesses and the attesting witnesses had put their signatures in presence of the executant.'

26. Much more recently, in ***Ashutosh Samanta (Dead) by LRs. and others vs. SM. Ranjan Bala Dasi and others***[8]**,** this Court noted that where the attesting witnesses died or could not be found, the propounder of the Will is not helpless, as Section 69 of the Evidence Act would be applicable. On facts, this Court found that others who were present at the time the testator and the two attesting witnesses signed the Will were examined and the Will was also supported by a registered partition deed which gave effect to it. Considering these circumstances in totality and as none of the heirs of the testator contested the grant of letters of administration, this Court held that there could be only one conclusion, i.e., that the Will was duly executed and the propounder was successful in proving it. Notably, there was no contest to the Will and that is a distinguishing factor when compared with the case on hand.

27. On the same lines, in ***Ved Mitra Verma vs. Dharam Deo Verma***[9]**,** having found that the attesting witnesses had died, this Court held that the examination of the Sub-Registrar, who had registered the Will and who spoke of the circumstances in which the attesting witnesses as well as the testator had signed on the document, would be sufficient to prove the Will in terms of Section 69 of the Evidence Act.

28. However, in ***Apoline D' Souza vs. John D' Souza***[10]**,** this Court had noted that Section 68 of the Evidence Act provides for the mode and manner through which execution of a Will is to be proved and held that proof of attestation of a Will is a mandatory requirement. Referring to the earlier judgment in Naresh Charan Das Gupta vs. Paresh Charan Das Gupta[11], which held to the effect that merely because the witnesses did not state that they signed the Will in the presence of the testator, it could not be held that there

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8 (2023) SCC OnLine SC 255
9 (2014) 15 SCC 578
10 (2007) 7 SCC 225
11 AIR 1955 SC 363

was no due attestation and it would depend on the circumstances elicited in evidence as to whether the attesting witnesses signed in the presence of the testator, this Court held that the mode and manner of proving due execution of the Will would indisputably depend upon the facts and circumstances of each case, and it is for the propounder of the Will to remove the suspicious circumstances.

29. In ***Bhagavathiammal vs. Marimuthu Ammal and others***[12]**,** a learned Judge of the Madurai Bench of the Madras High Court observed that the difference between Section 68 and Section 69 of the Evidence Act is that, in the former, one attesting witness, at least, has to be called for the purpose of proving execution and in the latter, it must be proved that the attestation of one attesting witness, at least, is in his handwriting and the signature of the person executing the document is in the handwriting of that person. It was rightly observed that Section 69 of the Evidence Act does not specify the mode of such proof and, in other words, the handwriting can be spoken to by a person who has acquaintance with the handwriting or the signature can be proved by comparison with the admitted handwriting or signature of the person executing the document.

30. Applying the above edicts to the case on hand, we may note that neither of the attesting witnesses to Ex. A10 Will Deed, viz., Pydi Appala Suranna and B. A. Ramulu, was examined before the Trial Court, in compliance with Section 68 of the Evidence Act. Pydi Appala Suranna was stated to have expired by the time the trial commenced and the whereabouts of B. A. Ramulu were not known. Therefore, Section 69 of the Evidence Act could have been made use of to prove the Will but no witness was examined who was familiar with the signature of either of the attesting witnesses and who could vouch for the same or produce an admitted signature before the Trial Court. The mere marking of Exs. C1 & C 2 affidavits was not sufficient to satisfy the requirement of Section 69 of the Evidence Act. More so, as Balaga Sivanarayana Rao (PW 6), the scribe of those affidavits, said that Pydi Appala Suranna did not sign Ex. A10 Will in his presence and he could not say whether the signature therein was that of Pydi Appala Suranna. Similarly, K. V. Ramanayya (PW 13), who attested Ex. C2 affidavit, supposedly of Pydi

12 2010 (2) Madras Weekly Notes (Civil) 704

Appala Suranna, said that he did not even know Pydi Appala Suranna and, therefore, he could not vouch for his identity. No evidence was adduced to prove the signature of the other attesting witness, B. A. Ramulu.

31. The contention that Section 69 of the Evidence Act does not require actual proof of the handwriting of at least one attesting witness and proof of the signature of the executant being in that person's handwriting cannot be accepted. ***Ashutosh Samanta*** (*supra*) and ***Ved Mitra Verma*** (*supra*) also did not hold so and, in any event, both are distinguishable on facts. In one, there was no contest to the Will and in the other, the Sub-Registrar himself adduced acceptable evidence in purported discharge of the mandate of Section 69 of the Evidence Act. Presently, no such clinching evidence has been produced to satisfy that mandate. It may be noted that PW 11, who was from the Registration Department, admitted that he did not know Venkubayamma personally and could not even recall her age. Therefore, his evidence that he witnessed the signing of Ex. A10 Will has no import in establishing its genuineness and validity. Ex. A19 Will Deed dated 26.05.1981 was marked in evidence by Nalini Kanth's guardian, Pasupuleti Anasuya, but it was not proved as per Section 63 of the Evidence Act. Kaliprasad said that he had never seen it. Therefore, merely because Kaliprasad was shown as the sole legatee therein, it cannot be accepted as genuine. In consequence, the signatures and thumb marks therein and available with the Registration Department, in connection therewith, cannot be assumed to be those of Venkubayamma. We may also note that this document was not of any particular antiquity as it was executed on 26.05.1981, just about a year before Ex. A10 Will dated 03.05.1982. Therefore, comparison of Exs. X1 & X2 thumb marks with the thumb marks available with the Registration Department in the context of Ex. A19 Will does not prove anything.

32. For the purposes of Section 69 of the Evidence Act, it is not enough to merely examine a random witness who asserts that he saw the attesting witness affix his signature in the Will. The very purpose and objective of insisting upon examination of at least one attesting witness to the Will would be entirely lost if such requirement is whittled down to just having a stray witness depose that he saw the attesting witness sign the Will. The evidence of the scribe of the disputed Will (PW 6) also casts a doubt on the identity of the executant as he specifically stated that a woman was sitting

at a distance but he could not tell whether she was Venkubayamma and he could not also tell whether Venkubayamma had signed the document. In effect, Ex. A10 Will was not proved in accordance with law and it can have no legal consequence. Nalini Kanth's claim of absolute right and title over Venkubayamma's properties on the strength thereof has, therefore, no legs to stand upon and is liable to be rejected.

33. In addition thereto, the suspicious circumstances that surround Ex. A10 Will render it highly unbelievable. Venkubayamma performed Kaliprasad's marriage in February, 1982, i.e., just a few months before the alleged adoption ceremony and execution of Ex. A9 and Ex. A10. PW 2, Nalini Kanth's natural father, also stated so. He also said that Kaliprasad was residing with Venkubayamma at the time of the adoption. These being the admitted facts, Kaliprasad being fully disinherited under Ex. A10 Will is surprisingly odd and opposed to normal behaviour. The disowning of her own grandson by Venkubayamma is a suspicious circumstance that remained unexplained. Unless there was some catastrophic incident which estranged her from him during those two months, it is not believable that Venkubayamma would have cast out her own grandson and excluded him from her Will. A passing sentence in Ex. A10 Will that he became uncaring towards her and was placing her in difficulties is not sufficient to explain this total disinheritance of a grandson within a few months of performing his marriage. More so, when the witnesses' evidence confirmed that he was with her and was on amicable terms throughout.

34. That apart, Venkubayamma stated in Ex. A10 Will that the adopted child would perform her funeral rites, pinda pradaan and other annual shastric ceremonies of her ancestors. As already noted earlier, the adopted child was of less than one year age at that time and Venkubayamma was in her 70s, if not more. If so, this expectation on her part, if at all believable, was wholly unrealistic. Significantly, Kaliprasad stated that it was he who performed the obsequies of Venkubayamma, his grandmother. Further, the scribe of Ex. A10 Will (PW 6) categorically stated that the instructions for scribing it were given by some other woman and not Venkubayamma, whereas Pasupuleti Anasuya (PW 1) stated that it was Venkubayamma, herself, who had given such instructions. So many suspicious circumstances surrounding Ex. A10 Will make it very difficult for us to accept and act upon the same, even if it had been proved as per law.

35. Coming to the adoption ceremony of 18.04.1982 and Ex. A9 Adoption Deed, where under Nalini Kanth would, in the alternative, claim a half-share in Venkubayamma's properties, we find that the same are also shrouded with equally suspicious circumstances. No doubt, Ex. A9 Adoption Deed was registered and Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for brevity, 'the Act of 1956'), raises a presumption in favour of a registered document relating to adoption. It reads as follows:

> '**16. Presumption as to registered documents relating to adoption** - Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.**'**

The presumption, as is clear from the provision itself, is rebuttable. In ***G. Vasu vs. Syed Yaseen Sifuddin Quadri***[13], a Full Bench of the Andhra Pradesh High Court pointed out that presumptions are of two kinds - presumptions of fact and of law. It was noted that a presumption of fact is an inference logically drawn from one fact as to the existence of other facts and such presumptions of fact are rebuttable by evidence to the contrary. It was also held that presumptions of law may be either irrebuttable, so that no evidence to a contrary may be given, or rebuttable, and a rebuttable presumption of law is a legal rule to be applied by the Courts in the absence of conflicting evidence. This view was affirmed by this Court in ***Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal***[14] and it was held that in order to disprove a presumption, such facts and circumstances have to be brought on record, upon consideration of which, the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

36. In this regard, we may also note that Section 11 of the Act of 1956 stipulates the conditions to be complied with to constitute a valid adoption and, to the extent relevant, it reads as under:

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13 AIR 1987 Andhra Pradesh 139

14 (1999) 3 SCC 35

> **'11. Other conditions for a valid adoption.** - In every adoption, the following conditions must be complied with: —
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> (i) to (v) ….;
>
> (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:
>
> *Provided* that the performance of *datta homam* shall not be essential to the validity of adoption'

37. We may now take note of relevant case law. In ***Laxmibai (Dead) through LRs. and another vs. Bhagwantbuva (Dead) through LRs. and others***[15]**,** this Court held that the mere signature or thumb impression on a document is not adequate to prove the contents thereof but, in a case where a person who has given his son in adoption appears in the witness box and proves the validity of the said document, the Court ought to accept the same taking into consideration the presumption under Section 16 of the Act of 1956. *Ergo*, the proving of the validity of the document is a must.

38. Much earlier, in ***Kishori Lal vs. Mst. Chaltibai***[16]**,** a 3-Judge Bench of this Court held that, as an adoption results in changing the course of succession, it is necessary that the evidence to support it should be such that it is free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth. On facts, the Bench found that no invitations were sent to the brotherhood, friends or relations and no publicity was given to the adoption, rendering it difficult to believe.

39. In ***Govinda vs. Chimabai and others***[17]**,** a Division Bench of the Mysore High Court observed that the mere fact that a deed of adoption has been registered cannot be taken as evidence of proof of adoption, as an adoption deed never proves an adoption. It was rightly held that the factum

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15 (2013) 4 SCC 97
16 AIR 1959 SC 504
17 AIR 1968 Mysore 309

of adoption has to be proved by oral evidence of giving or taking of the child and that the necessary ceremonies, where they are necessary to be performed, were carried out in accordance with shastras.

40. In ***Padmalav Achariya and another vs. Srimatyia Fakira Debya and others***[18]**,** the Privy Council found that a cloud of suspicion rested upon an alleged second adoption and the factum of the second adoption was sought to be proved on the basis of evidence of near relatives who were also partisan, which made it unsafe to act upon their testimonies. The Privy Council held that both the adoptions were most improbable in themselves and were not supported by contemporaneous evidence.

41. In ***Jai Singh vs. Shakuntala***[19]**,** this Court noted the statutory presumption envisaged by Section 16 of the Act of 1956 and observed that though the legislature had used 'shall' instead of any other word of lesser significance, the inclusion of the words 'unless and until it is disproved' appearing at the end of the statutory provision makes the situation not that rigid but flexible enough to depend upon the evidence available on record in support of the adoption. This Court further noted that it is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. This Court held that the statute allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason for inclusion of the words 'unless and until it is disproved', *per* this Court, have to be ascertained in proper perspective and as such, the presumption cannot but be said to be a rebuttable presumption. This Court further held that the registered instrument of adoption presumably stands out to be taken to be correct but the Court is not precluded from looking into it upon production of some evidence contra the adoption and the Court can always look into such evidence. This Court further noted the mandate of Section 11 (vi) of the Act of 1956 and held that the 'give and take in adoption' is a requirement which stands as a *sine qua non* for a valid adoption.

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18 AIR 1931 Privy Council 81
19 (2002) 3 SCC 634

42. In ***Mst. Deu and others vs. Laxmi Narayan and others***[20]**,** this Court observed that in view of Section 16 of the Act of 1956, whenever any document registered under law is produced before the Court purporting to record an adoption made and is signed by the persons mentioned therein, the Court should presume that the adoption has been made in compliance with the provisions of the said statute, unless and until it is disproved. It was further held that in view of Section 16 of the Act of 1956, it is open to the persons who challenge the registered deed of adoption to disprove the same by taking independent proceedings.

43. In ***Lakshman Singh Kothari vs. Rup Kanwar (Smt) alias Rup Kanwar Bai***[21]**,** having referred to texts on Hindu Law, this Court observed:

> '10. The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object, it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.'

44. In ***M. Vanaja vs. M. Sarla Devi (Dead)***[22]**,** this Court took note of the relevant provisions of the Act of 1956 and held that a plain reading of the said provisions made it clear that compliance with the conditions in

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20 (1998) 8 SCC 701
21 AIR 1961 SC 1378
22 (2020) 5 SCC 307

Chapter 1 of the Act of 1956 is mandatory for an adoption to be treated as valid and that the two important conditions mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and the proof of the ceremony of actual giving and taking in adoption.

45. In ***Dhanno wd/o Balbir Singh vs. Tuhi Ram (Died) represented by his LRs.***[23]**,** a learned Judge of the Punjab & Haryana High Court, faced with the argument that Section 16 of the Act of 1956 required a registered adoption deed to be believed, held that the presumption thereunder, if any, is rebuttable and by merely placing the document on record without proving the ceremony of due adoption, it could not be said that there was a valid adoption. The learned Judge rightly noted that the factum of adoption must be proved in the same way as any other fact and such evidence in support of the adoption must be sufficient to satisfy the heavy burden that rests upon any person who seeks to displace the natural succession by alleging an adoption.

46. Viewed in the backdrop of the above legal principles, as Ex. A9 Adoption Deed was registered, the presumption under Section 16 of the Act of 1956 attached to it and it was for Kaliprasad to rebut that presumption. We find that he did so more than sufficiently. Mere registration of Ex. A9 Adoption Deed did not absolve the person asserting such adoption from proving that fact by cogent evidence and the person contesting it from adducing evidence to the contrary. It is in this respect that various suspicious circumstances attached to the adoption ceremony of 18.04.1982 assume significance. It is an admitted fact that Venkubayamma was residing ordinarily at Srikakulam, which is at a distance (98 miles/150 kms) from Berhampur. While so, PW 2, himself, stated that she did not invite any of her relations from Srikakulam to attend the adoption ceremony at Berhampur. Normally, such occasions would not be kept secret or confidential as an adoption would usually be made with much pomp and celebration. The clandestine manner in which the alleged adoption is stated to have taken place raises a doubt but the same has not been adequately explained. Further, as already noted *supra,* no evidence was adduced to prove that relations between Venkubayamma and Kaliprasad, her grandson, had fallen out. The document also does not record any reasons as to why Venkubayamma was

23 AIR 1996 P & H 203

not happy with Kaliprasad, whose marriage she had performed in February 1982, just a few months earlier.

47. Pertinent to note, Pasupuleti Anasuya (PW 1) who was to play a pivotal role as the guardian of the adopted child in the event of Venkubayamma's death, seems to have been absent at the adoption ceremony and no reason or explanation worth the name has been offered therefor. She, herself, admitted that she was not present when the actual 'giving and taking of the child in adoption' took place and that she is not seen in Exs. A2 to A4 photographs. Significantly, she never stated in clear terms that she was actually present at that time. Her brothers (PWs 2 and 3) also did not vouch for her presence at the adoption. If she was to play such an important role in the adopted child's life, her absence at the ceremony and in the photographs speaks volumes.

48. PW 4 (the photographer), PW 7 (the purohit) and PW 14 (an identifying witness) were examined in addition to the family members, viz., PWs 2 and 3, to speak of their actually seeing the giving and taking of the child in adoption, but we find that their depositions are also not free from doubt. The photographs allegedly taken at the time of the adoption ceremony, viz., Exs. A2 to A4, are also not convincing. PW 12 and PW 14, who stated that the woman in the photographs was Venkubayamma, conceded that she did not look like a woman aged 70 years. The identifying witness (PW 14) himself stated that the woman in the photographs looked about 45 years old. Two of the tenants of Venkubayamma, viz., DW 2 and DW 3, said that the woman in the photographs was not Venkubayamma.

49. Though the High Court opined that the woman in Exs. A2 to A4 photographs was not Venkubayamma for the reason that Venkubayamma was a woman of advanced age and it was difficult to believe that she would have dyed her hair at that age, the same cannot be a deciding factor by itself. However, the issue, presently, is not whether Venkubayamma would have dyed her hair at the age of 70+ years but whether the dark-haired woman in Exs. A2 to A4 photographs was Venkubayamma at all. In this regard, as already noted above, it was not just the color of her hair that raised a question. Doubt arises, not only on that count, but even as to the age of the woman in the photographs, going by the witnesses' depositions. PW 12 had stated that Venkubayamma was about 70 years of age in the year 1970

itself, whereas Exs. A9 and A10 record her age as 70 years in 1982. Either way, the woman in Exs. A2 to A4 did not look close to those ages. In effect, there is no clinching evidence to prove that the woman in the photographs was, in fact, Venkubayamma.

50. The actual 'giving and taking' of the child in adoption, being an essential requisite under Section 11(vi) of the Act of 1956, we find that there is no convincing evidence of that 'act' also in the case on hand. Interestingly, there are no pictures of the actual 'giving and taking' of the child in adoption. In Exs. A2 and A3, the purohit (PW 7) is seen standing or sitting behind the others and the same cannot be taken to be during the ceremony of 'giving and taking', as he would have stood/sat in front of them, chanting mantras and incantations as per shastras. Ex. A4 is a group photograph. Further, there are no photographs of the *datta homam*, though PW 7 claimed that he had performed the same. Even though it is no longer considered an essential ceremony, it is of significance when performed, and would have been captured for posterity by taking pictures. Strangely, though a professional photographer (PW 4) was stated to have been engaged for the purpose of taking pictures at the adoption ceremony, he took only three photographs and no more. This parsimony is not explained. Further, PW 1 producing and marking Ex. A8 receipt, supposedly issued by PW 4 to the temple, with no explanation as to how it came into her possession, also does not inspire confidence.

51. More importantly, the evidence of the purohit (PW 7), who is stated to have conducted the ceremonies, leads to a doubt as to the very adoption having taken place. The adoption ceremony is stated to have been performed at Sri Sri Raghunadha Swamy Temple at Bhapur in Berhampur but as per PW 7, Raghunadha Swamy Temple is not even in Bhapur but in Chandramanipeta and only Ramalingeswara Swamy and Mukteswara Swamy Temples are at Bhapur. Though, this discrepancy is sought to be explained at this stage, the fact remains that there was no re-examination of PW 7 at that time to clarify this telling aspect.

52. That apart, Ex. A9 Adoption Deed is scribed in English but it does not even contain a recital that the contents thereof were read over and explained in Telugu to the executant. No evidence has been let in for the Court to deduce that Venkubayamma was conversant with English language.

Further, and more significantly, in the second page of Ex. A9 Adoption Deed, Venkubayamma's signature reads thus: "Moturu bayammma' and, thereafter, the word 'Venku" was interjected above. Underneath that signature, the signature 'Moturu Venkubayamma' is again affixed. It has come on record that Venkubayamma was in the habit of signing in English as well as in Telugu. If so, it is strange that she would not have signed her own name correctly on the second page and would have left out 'Venku' altogether. Further, the misspelling of 'bayamma' as 'bayammma' is also strange and significant.

53. Ex. A9 Adoption Deed records the age of Venkubayamma as 70 years and states that she was desirous of taking a male child in adoption as she had no male issues. The document also records that the adoptive child would perform the annual shraddha ceremonies and offering of Pinda and water, as her natural son, to her ancestors. Nalini Kanth was aged less than a year when this adoption deed was executed whereas the adoptive mother, going by the document itself, was aged 70 years. Being of that age, it is strange that Venkubayamma would have expected this toddler to perform her obsequies after her death and such other ceremonies for her and her ancestors. Further, it is difficult to believe that a woman of such advanced years would willingly take on the responsibility of caring for an infant at that age.

54. Last but not the least, Ex. A9 Adoption Deed mentions that the adoption took place at Sri Sri Raghunadha Swamy Temple but Ex. A10 Will records that Venkubayamma adopted the child with the consent of his parents in the presence of relations at the house of his parents at Chandramanipeta, Berhampur. Therefore, as per this document, the adoption took place, not at a temple, but at the house of the natural parents, i.e., PW 2's house. There is, thus, a contradiction between Ex. A9 Adoption Deed and Ex. A10 Will as to the place where the adoption took place. An attempt was made to discredit the scribe (PW 6) in this regard, but this disparity in the two documents which were drawn up within a short span of time speaks for itself.

55. On the above analysis, we are of the opinion that the adoption of Nalini Kanth by Venkubayamma on 18.04.1982 is not proved in accordance with law despite the registration of Ex. A9 Adoption Deed dated 20.04.1982. The very adoption, itself, is not believable, given the multitude of suspicious

circumstances surrounding it. Nalini Kanth cannot, therefore, be treated as her heir by adoption. Further, as Ex. A10 Will dated 03.05.1982 was also not proved in accordance with law, it does not create any right in his favour. In consequence, Nalini Kanth is not entitled to claim any right or share in Venkubayamma's properties. The findings of the High Court to that effect, albeit for reasons altogether different, therefore, do not warrant interference.

The judgment and decree of the High Court is confirmed.

The appeal is accordingly dismissed.

Costs of this appeal, their own.

Headnotes prepared by:
Divya Pandey

Appeal dismissed.