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SUPREME COURT ON NON-APPLICABILITY OF EQUALITY TO WILLS

A. Introduction:

Supreme Court (“SC”), in *Swarnalatha* case¹ observed that exclusion of one of the natural heirs from the bequest, cannot by itself be a ground to hold that there are suspicious circumstances. In the matter of appreciating the genuineness of execution of a will, there is no place for court to see whether the distribution made by the testator was fair and equitable to all of his children.

B. Brief Facts:

1. Mannar Reddia (father) and Adhilakshmiammal (mother) (“**Testators**”) had a daughter (viz., Kalavathy) and two sons. At the time of her death, Adhilakshmiammal left a will bequeathing the properties she purchased and those she received from maternal uncle to her two sons. The daughter was denied a share on the grounds that she had already been adequately provided for.
2. Father died in the year 2000 and he left a will bequeathing his property to his two sons and grandchildren. Explanation for not giving the property to daughter was made in the will.
3. The eldest son died in the year 1999 leaving behind his wife Swarnalatha and two sons (“**Appellants**”).
4. Testators’ daughter Kalavathy and surviving son Sivakumar (“**Respondents**”) filed partition claim. Subsequently, the Appellants filed petition for grant of probate of the wills. The Principal District Court, Vellore (“**District Court**”) granted probate of both the wills.
5. Challenging the District Court judgment, Respondents appealed before the High Court of Madras (“**HC**”). While reversing the District Court judgement, HC recorded the following along with other findings:²
 - a. Testatrix (i.e., mother) of the unregistered will was suffering from ailments, prior to the execution of the will. The non-furnishing of the particulars of the ailments created a doubt.
 - b. Failure of the legatees to probate the mother’s will during the lifetime of the father is a suspicious circumstance.
6. Aggrieved by the HC judgment, Appellants approached the SC challenging the correctness and legality by impugning the said judgement.

¹ *Swarnalatha & Others vs Kalavathy & Others* MANU/SC/0381/2022 ([Live Law link to the judgment](#)).

² Para 15 of the Judgement.

C. Judgment & Reasoning:

SC allowed the appeal on the following reasoning:

1. Referring to findings of HC in its judgement, SC opined that each one of the circumstances, neither individually nor collectively, creates a suspicion including as to the delay by the Appellants in seeking probate of the wills.
2. It stated that when it is not even the case of the Respondents that the Testators were not in sound and disposing state of mind, HC found fault with the Appellants for not disclosing the nature of the ailments suffered by them.
3. Emphasising on *Kavita Kamwar* case,³ it stated that the law relating to suspicious circumstances surrounding the execution of will is already well settled and needs no reiteration. The cases in which a suspicion is created are essentially those where either signature or mental capacity of the testator is questioned. All the decisions it referred to in *Kavita Kamwar (supra)* list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, become suspicious circumstances.
4. It observed that “*In the matter of appreciating the genuineness of execution of a Will, there is no place for the court to see whether the distribution made by the testator was fair and equitable to all of his children. The court does not apply Article 14⁴ to dispositions under a Will*”.⁵
5. On total exclusion of the daughter from the bequest, it observed that the reason given in the will for not including r were more than convincing to show that the exclusion has happened in a very natural way.

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³ *Kavita Kamwar Vs Mrs. Pamela Mehta MANU/SC/0450/2020; AIR 2020 SC 544.*

⁴ Equality before Law.

⁵ Para 25 of the Judgement.

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