

# SUPREME COURT OF INDIA

E. Madhavi Pallikkaramma

Vs.

K.V. Prabhakaran Nair

(S Majmudar and U Banerjee JJ.)

26.04.2000

## ORDER

### **S.B. MAJMUDAR AND U.C. BANERJEE, JJ.**

1. This appeal is on grant of special leave under Article 136 of the Constitution of India.
2. The Appellants have challenged the decision of the Division Bench of the High Court of Kerala confirming the grant of probate of Will as ordered by the trial court. The Respondents herein had filed original petition under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of an unregistered Will alleged to have been jointly executed by one Ummamma Amma and Kunhiraman Nair, on 14.10.1966. Ummamma Amma died on 3.11.1966 and Kunhiraman Nair, the other co-testator died on 18.7.1978. The deceased were members of the Kunnath Tavazhi. Respondent nos. 1 to 7 were members of a collateral branch of the Tavazhi while 8th Respondent was maid servant and was dependent of the co-testator Kunhiraman Nair. Kunhiraman Nair was the manager of a school. He had several other properties. Under the Will the school and its site had been bequeathed to Respondent Nos. 1 and 2 . The other properties were given to Respondent Nos. 1 to 7 with direction to pay the 8th Respondent an amount of Rs. 250/-. The caveator to the probate proceedings is the widow of Kunhiraman Nair. The husband of the other co-testator Ummamma Amma was stated to be alive when she died. He did not file any caveat.
3. After hearing the contesting parties the trial court, in the light of the evidence recorded before it, came to the conclusion that the Will was proved and was not surrounded by any suspicious circumstances and hence granted the probate. The Division Bench of the High Court, after carefully re-appreciating the evidence, came to the same conclusion.
4. In our view, the said conclusion is well supported by evidence on record and calls for no interference under Article 136 of the Constitution of India in the present proceedings.
5. Learned senior Counsel for the Appellants, however, vehemently contended that the said Will gave legacy which prima facie was unnatural in character. He submitted that Kunhiraman Nair had totally disinherited his wife who was staying with him for number of years and bequeathed nothing in her favour. Similarly, the other co-testator Ummamma Amma had given nothing to her husband

in the Will. These are suspicious circumstances.

6. The High Court has noted while agreeing with the trial court that the testator was dealing with Tavazhi properties and if any properties were given to testator's spouse they would ultimately have gone to the family members who would be strangers to her husband. If the wife was capable of taking care of herself out of her properties, there had been no necessity for making any provision for that purpose. As she had been living with her husband, she would need no extraneous assistance during her lifetime.

7. For all these reasons, the High Court rightly came to the conclusion that nothing was unnatural in not giving any properties to her.

8. So far as the grievance regarding disinheritance of the husband of another co-testator Ummamma Amma was concerned, it has to be noted that even though she was suffering from cancer it could not be said that she was not in a sound disposing state of mind at the time of the Will. Even the husband had made no grievance at any stage nor was he staying with the wife who was living with her brother, the other co-testator. Secondly even though in probate proceedings public notice would have been issued the husband never had made such a grievance regarding this alleged disinheritance by his wife. The caveat or-wife of the other co-testator could not make a grievance on his behalf.

9. For all these reasons, therefore, it could not be said that the Will was of unnatural or was executed under any suspicious circumstances. Therefore, we are not inclined to interfere in these proceedings. The Civil Appeal is, therefore, dismissed with no order as to costs.