IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 10TH DAY OF APRIL 2026 / 20TH CHAITHRA, 1948

MFA (INDIAN SUCCESSION ACT) NO. 18 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 09.10.2018 IN OS NO.7 OF 2015 (O.P.NO.335 OF 2014) ON THE FILES OF THE ADDITIONAL DISTRICT JUDGE – V, KOZHIKODE

APPELLANTS/DEFENDANTS 1, 3 AND 4:

1 P.LAKSHMIKUTTY AMMA,
W/O.LATE C.KUNHIKRISHNA KURUP, 5/2587,
"DARASANA", BALAN K NAIR ROAD,
ERANHIPALAM.P.O., KOZHIKODE, PIN-673006.

2 V.K.VIJAYAN
S/O.LATE C.KUNHIKRISHNA KURUP, PARTNER,
CORAL COOLING SYSTEMS, NO.18/1010, SHYAMALA ARCADE, Z.N.CROSS ROAD, THALI, CHALAPPURAM,
KOZHIKODE-673002.

3 V.K.JAYACHANDRAN,
S/O.LATE C.KUNHIKRISHNA KURUP, V.K. STORE,
KATTIYAM, AROLI.P.O., KANNUR DISTRICT, (NOW AT CHODON HOUSE, 7/384, KEECHERIKUNNU,
PAPPINISSERY.P.O., KANNUR DISTRICT, PIN-670561).

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.B.PREMNATH (E)

RESPONDENTS/PLAINTIFF & 2ND DEFENDANT:

1 **V.K.INDIRA,**
W/O.SREEDHARA KURUP, 29/1640 FI,
PUTHUKKUDI NAGAR, KOTTOOLI AMSOM DESOM,
KOZHIKODE-673016.

2 **V.K.RAVINDRAN,**
SENIOR MANAGER, INSPECTION DEPARTMENT,
PUNJAB NATIONAL BANK, CIRCLE OFFICE,
GOVINDAPURAM, KOZHIKKODE, PIN-673016
(NOW AT : C2, JEEVAN BIMA NAGAR, NEAR GOVERNMENT HOMEO COLLEGE, KARAPPARAMBA, KOZHIKODE, PIN-673010).

BY ADVS.
SHRI.B.KRISHNAN - R1
SRI.T.D.SUSMITH KUMAR - R2
SHRI.R.PARTHASARATHY

THIS MFA (SUCCESSION) HAVING BEEN FINALLY HEARD ON 10.04.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

[CR]

S.MANU, J.

MFA(Indian Succession Act) No.18 of 2019

Dated this the 10th day of April, 2026

JUDGMENT

Defendants 1, 3 and 4 in O.S.No.7/2015 on the file of the Additional District Judge-V, Kozhikode, have filed this appeal under Section 299 of the Indian Succession Act, 1925. First appellant is the mother of appellants 2 and 3 as also respondents 1 and 2. The 1st respondent is the plaintiff. The second respondent is the second defendant in the suit.

2. The proceeding before the District Court was instituted as an original petition under Sections 71 and 270 of the Indian Succession Act, seeking a declaration that the Will dated 27.07.1993 executed by late Kunhikrishna

Kurup, the husband of the 1st appellant and father of the remaining parties, be construed to the effect that the plaint schedule properties were bequeathed to the 1st respondent, who is the only daughter, and for grant of probate, ignoring a correction in the 8th line of page No. 2 of the Will, by which the bequest was altered in favour of all the children of late Kunhikrishna Kurup. Further, injunction restraining the appellants and the 2nd respondent from causing any damage to the property, making alterations, encumbering or transferring the same to the third parties was also sought. Appellants and the 2nd respondent contested the proceedings raising serious contentions. Therefore, the District Court converted the petition as Original Suit No.7/2015, invoking Section 295 of the Indian Succession Act. Thereafter the appellants and the 2nd respondent filed a written statement. On the basis

of the pleadings, the learned Additional District Judge framed five issues. On the side of the 1st respondent/ plaintiff, PW1 to PW3 were examined. The 1st respondent herself was examined as PW1. Daughter of one among the attesting witnesses to the Will was examined as PW2. The Assistant Director (Documents), Forensic Science Laboratory, Thiruvananthapuram was examined as PW3. Exts.A1 to A7 were marked on the side of the plaintiff. On the side of the appellants and the 2nd respondent, DW1 to DW5 were examined. The 1st appellant was examined as DW1 and the 2nd appellant was examined as DW2. DW3 was a witness to the opening of the sealed cover in which Will was kept. DW4 was the Registrar who opened the Will on 06.12.2006. The Sub Registrar who prepared Ext.X2 was examined as DW5. Exts.X1 to X3 as also C1 were marked. On the side of the appellants and 2nd respondents

Exts.B1 to B9 were marked.

3. The dispute pertains to a correction in the 8th line of page No.2 of Ext.X1 Will. The Will was executed on 27.07.1993 by Kunhikrishna Kurup and was deposited before the District Registrar on the same day. On 06.12.2006, after death of Kunhikrishna Kurup, the 2nd appellant approached the District Registrar with the receipt of the deposit issued to Kunhikrishna Kurup and requested to open the sealed cover deposited. The District Registrar opened the sealed cover in the presence of the 2nd appellant and also two witness who are the friends of the 2nd appellant. The District Registrar made arrangements for preparing a true copy of the Will and filing it in Book No.3. Thereafter the Will was registered as document No.94/ 2006. Later the Will was again deposited on 13.12.2006. These are undisputed facts.

4. The 1st respondent was supplied with a copy of the Will when a portion of the plaint schedule property was acquired. She was told that the Will was executed in favour of all children. The copy provided to her was not legible. She at first believed that it was executed in favour of all children and filed a statement before the Land Acquisition Officer to that effect. Later she obtained a copy of the Will from the District Registrar under the provisions of the Right to Information Act, on 30.09.2013. Then only she realized that there was a correction in page No.2 altering the word 'മകൾ' as 'മക്കൾ'. She could realize that the Will was tampered and converted as a bequest in favour of all children though it was actually a bequest exclusively in her favour. She therefore approached the District Court to grant probate showing that the bequest was in her favour only. The reliefs sought by her are already mentioned in

the opening paragraphs.

5. The appellants and the 2nd respondent denied the allegations of the 1st respondent. According to them late Kunhikrishna Kurup executed the Will in favour of all children and no correction or alteration as alleged was made at any point of time. The document was executed with the intention to bequest the plaint schedule property for the benefit of all children and there was no occasion for making any correction or alterations.

6. Evidence of the case consists of oral testimonies of the witnesses and documents marked, as noted above. The 1st respondent was examined as PW1 and she deposed in tune with her case in the plaint. One Mr.Balakrishnan was the second attesting witness to Ext.X1 Will. He passed away before the trial. His daughter was examined as PW2 to identify his signature. She identified the signature in the Will.

7. The Will was examined by PW3. His report was marked as Ext.C1. He stated that there was overwriting or alteration in the 8th line in the 2nd page of the Will and the same was visible even to the naked eye. He however stated that there was no method available to compare the age differences of the writings and alterations.

8. The 1st appellant mounted the box as DW1 and deposed that her husband had no intention to bequeath the property solely on the 1st respondent. She further stated that the husband of the 1st respondent used to threaten Kunhikrishna Kurup for money and he had extracted money from Kunhikrishna Kurup. She also spoke about financial support provided to the sons.

9. The 2nd appellant, examined as DW2, stated that the Will was opened on 06.12.2006. However, a copy was

taken only on 16.04.2008. He claimed that the word 'മക്കൾ' was there as such in the document when it was opened. He denied that any corrections or alterations were made after the Will was opened. One of his friends was examined as DW3 who was present at the time when the Will was opened. He asserted that there was no correction in the Will.

10. The Registrar, examined as DW4, spoke about the opening of the cover containing the Will and the copying thereof into Book No. 3. He stated that if any mistake had been noticed at the time of reading the Will, it should have been recorded in Ext.X2. He stated that it appears to him also that there was a correction in the 8th line of the 2nd page. The Sub Registrar, examined as DW5, deposed that he prepared Ext.X2 copy of the Will when he was working as U.D clerk in Kozhikode Sub-Registrar office and there

were no corrections in Ext.X1 original Will at the time when he copied it into Ext.X2. He further stated that it appeared to him that there is an alteration in the word 'മക്കൾ' in Ext. X2

11. The appeal was argued for the appellants by Sri.T Krishnan Unni, Senior Advocate. For the 1st respondent Adv.Sri.B.Krishnan appeared and Adv.T.B.Susmith Kumar appeared for the 2nd respondent.

12. Heard the respective counsel for the parties and perused the records.

13. The learned Senior Counsel for the appellants referred to various provisions of the Indian Succession Act as also the Registration Act. He also made extensive reference to the pleadings, evidence and also to some reported judgments. Regarding the dates and events, the learned Senior Counsel highlighted the fact that the Will

was opened, copy was made and it was recorded on the same day. He submitted that under such circumstances there was no scope for any manipulation. He raised a contention regarding the limited scope of the proceedings under the Indian Succession Act for granting probate. He also pointed out some of the attendant circumstances which according to the appellant are relevant for the purpose of understanding the intention of the testator. He submitted that the 1st appellant, mother was specifically provided right to live in the residential building situated in the plaint schedule property. He submitted that in the Will, the parties were referred to with clarity about their necessary attributes. He submitted that if the real intention was to bequeath the property to the 1st respondent, nothing prevented the testator from describing her personal details also in the Will.

14. The learned Senior Counsel further contended that, the scope of proceedings under the Indian Succession Act being very limited, the Court exercising appellate powers should also confine its enquiry only to the genuineness and validity of the Will. He argued that there are no specific averments in the plaint constituting a clear case. The 1st respondent is not sure as to when the alteration was made. The learned Senior Counsel also submitted that there are no proper pleadings in the suit. He further submitted that it was not necessary for the appellants to approach the Court to probate the Will. Relying on **Gurdial Singh (Dead) Through Lr v. Jagir Kaur(Dead) and Another**[2025 SCC OnLine SC 1466] and **B.Venkatamuni v. C.J.Ayodhya Ram Singh and Others** [(2006) 13 SCC 449], the learned Senior Counsel explained the principles to be kept in mind by the Court

when analyzing suspicious circumstances vitiating a Will.

15. The learned counsel for the 1st respondent refuted the contention of the learned Senior Counsel. He argued that if the real intention of late Kunhikrishna Kurup was to provide the plaint schedule property to all children, there was no necessity to execute a Will and to deposit the same. Even in the absence of a Will the property would have devolved on the wife and children of the testator. He therefore submitted that the intention of the testator, undoubtedly was to bequeath the property to the daughter, which could not have been ensured without executing the Will. He submitted that the mother was residing with her sons and therefore she was indoctrinated by the sons and therefore she spoke against the interest of the 1st respondent. He forcefully contended that the correction made in page No.2 is well evident and the fact that the Will

was redeposited only after a gap of about a week after its registration would show that the officials of the office of the District Registrar facilitated manipulation for the benefit of the sons at the instance of the 2nd appellant. He also pointed out that the gap in obtaining a certified copy of the Will was not properly explained by the 2nd appellant which is a highly suspicious circumstance. He also argued that the photocopy provided to the plaintiff was not legible and the same was intentional. Once she realized that the bequest was in favour of her exclusively, she pointed out the same in the land acquisition proceedings also. The learned counsel asserted that the manipulation is manifest and therefore the learned Additional District Judge passed the impugned order perfectly in accordance with law.

16. Relying on **Thresiamma v. Joseph** [1998 (1) KLT 426] the learned counsel for the 1st respondent contended

that in the case of contentious probate cases the procedure to be followed is of a regular suit. He relied on the judgment of the Hon'ble Supreme Court in **Dayanandi v. Rukma D. Suvarna and Others** [(2012) 1 SCC 510]. The relevant paragraph of the judgment reads as under:

> "15. The plain language of Section 71 makes it clear that any alteration made in an unprivileged will after its execution has no effect unless such alteration has been executed in the same manner in which the will is executed. The proviso to this section carves out an exception and lays down that such alterations shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alterations or at the foot or end or opposite to a memorandum referring to such alterations and written at the end or some part of the will."

17. The learned counsel relied on a judgment of the Calcutta High Court in **Baisnav Charan Dass Bairagi v. Kishore Dass Mohanta** [1911 SCC OnLine Cal 116]. It was held by a Division Bench as under:

> "9. As regards the partial admission of Wills to probate, the law is very clearly set out with the cases which govern it in Williams' Law of Executors and Administrators, 10th Edition, Vol. I, p. 291. It states that a Will may be in part admitted to probate and in part may be refused,— "if the Court shall be satisfied that a particular clause has been inserted in the Will by fraud without the knowledge of the testator in his lifetime, or by forgery after his death, or if he has been induced by fraud to make it a part of his Will, probate will be granted of the instrument with the reservation of that clause; or where a clause has been introduced per incuriam and the deceased executes the paper not having given any instruction for such clause and it not having been read over to him, probate would be grand of the remainders of the paper omitting such clause; but the Court cannot even by consent order a passage of the Will to be expunged which the testator being of sound mind intended to form part of it."

18. The learned counsel for the 2nd respondent supported the appellants. He also challenged the report of the expert. He argued that the expert did not conduct any proper analysis with the help of appropriate technology. He submitted that it was possible to find out whether two different inks were used if proper technology was utilized in

the analysis. He contended that there was no correction or manipulation and hence no interference is warranted in this appeal. He relied on a reported order of the Madras High Court in **A.Sivagnana Pandian v. M.Ravichandran** [2010 SCC OnLine Mad 6152].

19. On appreciating the evidence and arguments advanced, it can be safely concluded that no one has a case that there is no correction in the 8th line in page No.2 of Ext.X1 Will. Even to the naked eye, the alteration made is visible. PW3, the expert has also confirmed that there is an alteration. Section 71 of the Indian Succession Act deals with effect of obliteration, interlineation or alteration in unprivileged Will. Section 71 is extracted hereunder for ready reference:

> "71. **Effect of obliteration, interlineation or alteration in unprivileged will** - No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have

> any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will:
>
> PROVIDED that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will."

20. In view of the proviso, if there is any alteration, it shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is appropriately made. In the case on hand there is no signature and subscription made in the margin or at the foot, end or opposite to a memorandum referring to such alteration. Hence the resultant situation is that there is apparently a correction which has not been acknowledged

as provided under Section 71 of the Act. In this regard it is pertinent to refer to the evidence of the Sub Registrar who was examined as DW5. He categorically stated that there was no correction in Ext.X1 at the time when he copied it into Ext.X2. He further stated that in Ext.X2, it seems that there is an alteration. He also stated that if there was any correction in the word "മക്കൾ" in Ext.X2 while copying, he would have mentioned it as a footnote.

21. In view of Section 71, if there is a correction, the correction or alteration shall have no effect in the absence of a certification by the testator or the witnesses. In the light of the deposition of DW5, the only conclusion possible is that the alteration was made after the preparation of Ext.X2 by DW5. In this connection the fact that the will was redeposited only on 13.12.2006 though it was registered on 06.12.2006 assumes significance. True that there were

some intervening holidays. But there was significant unexplained delay in redepositing. It can be safely concluded on a careful appreciation of the evidence as also the facts and circumstances that the redeposit was delayed to facilitate manipulation.

22. It is apposite to refer to certain reported judgments of foreign courts, as well as a judgment of the Calcutta High Court on the impact of alterations in Wills.

23. The Privy Council (U.K.), in **Cooper v. Bockett** [4 Moo. P.C. 419], held as follows with regard to the validity of alterations made to a will:

> "There is, then, no proof whatever of the time at which the alteration was made, nor have we any means of ascertaining whether they were made before the execution. The belief of one witness, George Crittenden, that there was some black scratching on the Will when he signed it, amounts to nothing; for grant it to be so, we have no means whatever of knowing whether it was one of the smaller or of the larger erasures and superscriptions; and if it was, as is most likely, the larger, we cannot

tell whether it was the alteration of the residuary legatees' names, or the erasure of the annuity to Thomas Cooper; therefore, we are to take it as wholly unknown whether the alterations were made before execution or after. This brings us to the question of law, and here it is obvious to remark that the alterations are most material; they amount, indeed, to reversing the whole Will, for the entire Will is a gift of the legacies, subject to certain annuities; and the first alteration is an entire change of the residuary legatee, and the last is an erasure of one of the annuities. Can anything be more clear than that we ought to know whether the testator executed, and the witnesses subscribed, this Will as it now exists, or a former Will? for that is precisely the question before us.

If it be said, that whoever impeaches an instrument must prove his grounds of objection, it is obvious to any one, that whoever propounds an instrument which, on the very face of it, exhibits grounds of great doubt, must remove those grounds, and clear up the doubts. If a Will, or a note, be tendered in evidence, by a Defendant, as a receipt in proof of payment, and there appears an alteration of the sum, or if the party's name be changed, then there must be proof given, of the alteration having been made, before the signature, else the instrument cannot be regarded as genuine.

In the case of a deed, it was formerly the rule, that, when the Court saw, upon inspection, that there was a material erasure or interlineation, the instrument was on that plea refused, and held null, as being a kind of demurrer. But it is said in the books, that afterwards, when deeds became so long,

that clerical errors crept, often almost unavoidably, into them, the matter was made a question of evidence, and so left to the jury. We find it, however, laid down by all the authorities, that, even in the case of a deed, the effect of an erasure is important; for, says Buller, J.,(N. P. 255 a,) "If there be any blemish in the deed by razure or interlineation, the deed ought to be proved though it were above thirty years old, by the witnesses if living, and if they be dead by proving the hand of the witnesses, or at least one of them, and also the hand of the party, to encounter the presumption arising from the blemish of the deed, and this ought more especially to be done, if the deed impute a fraud;" and to the same purport is the passage in Gilbert's Treatise on Evidence, p.89.

That an alteration, if made, though by the testator himself, after execution, and without republication, would be fatal to the Will, is clear, and no authority is required to support such a proposition. The Court of Common Pleas so held expressly in a case sent from the Court of Chancery for their opinion. (Larkins v. Larkins, 3 B. and P. 16.)

If, indeed, we for a moment consider the consequences of holding a contrary doctrine, we must at once be convinced how fatal this would be to the authority of documents, how entirely subversive of the rights of parties, and how completely abrogatory of the Statute. A party might change the sums of all the legacies left in a Will; he might change the parties' legatees; he might change the parties, the parcels, and the devises, in a Will of lands, and all this might be effected without the least knowledge on the part of the testator, who, having

given one gift to one person, might be made to give another to the same, or the same to another person. Even if a testator made the alteration after the execution and attestation, it would be a bequest or devise not witnessed; and it is obvious to remark, that he might be of sound and disposing mind at the one period, when the factum took place, and wholly incompetent when he made the alteration. The whole protection thrown round parties by the Statute, would thus be taken away."

24. In **Greville v. Tylee** [7 Moo. P.C. 320], the Privy Council relied on **Cooper v. Bockett** [4 Moo. P.C. 419] and held as under;

"Bearing these circumstances in mind, we will now consider what effect is to be attributed to them with reference to the Statute of Wills, 1 Vict., c. 26, and the 21st section of that Statute. That section relates to obliteration, interlineation, or other alteration in the Will after execution: all such are void, if not affirmed in the margin, or otherwise, by the signature of the Testator, and attestation of witnesses.

It will be recollected that these words of the Statute apply only to acts done after the execution of the Will. But how is this to be ascertained, whether such acts appearing on the face of the Will were done before or after the execution? On whom is the onus probandi thrown, and under what circumstances?

It is not a mere difference of ink or handwriting,

which would constitute any of the acts done according to the true meaning of the Statute. The mere circumstance of the amount or name of the legatee, inserted in a different handwriting and in different ink, would not alone constitute an obliteration, interlineation, or other alteration. Blanks may be supplied, and in a different ink, because the Will may very probably be brought with blanks to the Testator, and then filled up; no presumption could arise in such a case against the Will having been executed as it appears.

But the case is different when there is an erasure apparent on the face of the Will, and when that erasure has been superinduced by other writing. In such a case there is an obliteration and something more, which constitutes an alteration, and then the question arises, whether this was done before the execution of the Will or not? We apprehend it to be now settled, that whoever alleges such alteration to have been done before the execution of the Will, is bound to take upon himself the onus probandi, Cooper v. Bockett (4 Moore's P.C. Cases, 419), followed and approved of by Lord Cranworth, in Simmons v. Rudall (1 Sim., N.S. 137).

It has been argued that this rule applies only to the words erased, and the words superinduced, and that it does not apply to the preceding words of the sentence, viz., the words "in the Long Annuities;" and it is true, that if this case was to be decided with reference to the Statute only, the mere fact of the words "in the Long Annuities" being in different ink, would not constitute an obliteration, interlineation, or alteration, within the meaning of the 21st section, and, consequently, the onus probandi, with reference

> to the Statute, would not be thrown upon the party propounding; but there is another question in this case, which would have arisen if the Statute never had passed; namely, to what words and what bequest the Testatrix intended to give effect, by inserting the words "Charles Greville, M.D., Bath;"of what did she know and approve of, when she executed the Will. To try this question properly, we think that the case cannot be so divided; it must necessarily be taken as a whole: and, consequently, finding an alteration made after the signature of the Testatrix, and that the words preceding, "in the Long Annuities," were written with a different pen and at a different time from the body of the Will, we must inquire whether they had the approval and authentication of the Testatrix with reference to all the facts."

25. In **Surendra Krishna Mondal v. Rani Dassi** [1920 SCC OnLine Cal 52] , Calcutta High Court made the following observations;

> "There remains one objection which, though it looked formidable at one stage, does not require elaborate consideration. Attention was drawn to the fact that the word sthabar (immovable property) in the will, looked like an interpolation, and specific evidence, it was said, must be adduced to show that the interpolation was made before execution and attestation. The alteration is admittedly not initialed as contemplated by section 58 of the Indian

Succession Act. Now, it is well settled that where unattested alterations occur in a will, the presumption of law is that such alterations were made after the execution of the will, and in the absence of evidence rebutting the presumption, probate will be granted of the will in the original state, omitting the alterations. This rule has been affirmed by the Judicial Committee in Cooper v. Bockett, Greville v. Tylee, and has been subsequently, followed In the goods of Sykes [(1828) 2 Hagg. 84.], In the goods of Adamson [(1873) L.R. 3P. & D.72] and Pandurang Hari Vaidya v. Vinayak Vishnu Kane [(1873) L.R. 3P. & D.64]. The present case, however, is free from difficulty; there is positive evidence that the will, as it now stands, was read over in its entirety before the testator executed it. The presumption mentioned is consequently rebutted by direct proof, and this accords with the obvious intention of the testator, who wished to make a disposition of his entire estate and not he intestate in respect of the most valuable portion thereof. It may be added that the presumption may be rebutted not merely by direct proof, but also by internal evidence and by inferences drawn from the condition of the will: In the goods of Hindmarch [(1840) 3 Moo. B.C. 282], In the goods of Cadge [(1824) 3 Add. 206], In the goods of Tonge [(1843) 2 Mood. & Rob. 501]. As regards the marginal note also, there is no real difficulty; it was signed by the testator, and on the evidence, had been written out before execution and attestation."

26. The law is trite regarding alterations in the Will. In view of the provisions of S.71 of the Succession Act, probate can be granted omitting the alterations and thereby giving effect to the true intent of the testator.

27. The learned Senior Counsel for the appellants had argued that the learned Additional District Judge erred in undertaking a deep analysis as in a regular suit and pronouncing on various contentions raised by the plaintiff. He argued that the jurisdiction of the probate court is limited. He relied on the judgment of the Hon'ble Supreme Court in **Ishwardeo Narain Singh v. Kamta Devi and Others** [(1953) 1 SCC 295]; **Kunjunjamma v. Rosamma** [2009 SCC OnLine Ker 6415] and **Thrity Sam Shroff v. Shiraz Byramji Anklesaria and Another** [2007 SCC OnLine Bom 200].

28. In **Ishwardeo Narain Singh** (Supra) the Hon'ble Supreme Court held as under:

> "4. The dismissal of the application for probate on the ground that the disposition in favour of Thakurji is void for uncertainty can on no principle be supported and indeed the learned counsel appearing for the respondent has not sought to do so. The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. It is surprising how this elementary principle of law was overlooked by both the courts below. However, as the learned counsel appearing for the respondents has not sought to support this ground nothing further need be said on that."

29. In **Kunjunjamma** (Supra) a Division Bench of this Court held as under:

> "29. On a consideration of the various case laws, as discussed above, there cannot be two opinion that unlike in the matter of grant of succession certificate covered by Part-X of the Indian Succession Act, the jurisdiction of a Probate Court or letters of administration under Chapter - IX cannot be said to be

summary in nature. On the other hand, the validity or otherwise of a Will executed, on which the exclusive jurisdiction vests with the Probate Court and it is conclusive and binding, and in that sense, it is a judgment in rem. But the right under the Will, based on interpretation of the various terms contained in the Will, are matters on which the Probate Court has no jurisdiction. It is not only the title of the testator, but also whether a legatee had only life estate or absolute right over any item of property bequeathed, depending upon the construction of the terms contained in the Will, is not a matter falling within the exclusive jurisdiction of a Probate Court. The conclusiveness of Probate Court is only with relation to the validity of the Will."

30. In **Thrity Sam Shroff** (Supra) a Division Bench of The Bombay High Court held as under:

"30. Considering all the above decisions, it is abundantly clear that the probate proceeding, though on being contested, becomes contentious proceeding, and therefore, it is to be proceeded in the form of a suit, but that by itself does not transform the proceeding into a suit under the Code of Civil Procedure. The provisions of Code of Civil Procedure would apply to such proceedings to the extent they are not inconsistent with the provisions of law comprised under the said Act. Section 226 of the said Act specifically provides that in case of death of an executor, representation would survive to the surviving executor or executors, as the case may be.

> At the same time, section 222 clearly specifies that the probate can be granted only to an executor. In other words, the probate proceedings are essentially at the instance of the executors so named in the Will, and can survive till the executors survive. Moment the sole executor dies or all the executors die, the question of proceeding being kept alive does not arise at all, as there would be no occasion in such a case to grant any probate. Such a proceeding would die a natural death as a consequence of non survival of any executor. In such circumstances, the question of applicability of Order XXII of the Code of Civil Procedure does not arise at all.
>
> [Emphasis added]

31. When a proceeding is converted as a suit under Section 295 of the Act, such a suit would not assume the character of a regular suit under the Code of Civil Procedure. The scope of enquiry by the Court remains constricted as of a probate court even if the proceeding is converted as a suit. Learned author Durga Das Basu in his commentary on Law of Succession explains the scope of S.295 as extracted hereunder :-

"Undoubtedly, Section 295 of the said Act is in relation to procedure that is to be followed in respect of probate proceedings, once the same becomes contentious. The petitioner for the probate becomes the plaintiff whereas the person who opposes the grant of probate becomes the defendant and the proceedings proceed in the form of a regular suit according to the Code of Civil procedure, the provision of law, however, nowhere states that the proceedings for grant of probate would be a suit under the Code of Civil Procedure. The framers of law on the contrary have cautiously used the expression "take", as nearly as may be, the form of a regular suit according to the provision of Code of Civil Procedure". Firstly, it is not stated to be a suit under the Code of Civil Procedure. Secondly, it is specifically stated that the proceedings should take the "form of a regular suit". Thirdly, it specified to take the form of a suit "as nearly as may be" and not even-full-fledge form of a suit. If the intention of framers of law was to give the character of a suit under the Code of Civil Procedure to such proceeding, then there was no need to incorporate all those expressions in Section 295 and it would have been sufficient to specify the proceeding to be suit under the Code of Civil Procedure. Instead, the framers have specifically clarified that the proceeding shall merely take the form of a suit according to the Code of Civil Procedure and that too as nearly as possible, meaning thereby that though the proceeding is not a suit within the meaning of the said expression under the Code of Civil Procedure,

> yet the provisions of the Code of Civil Procedure, to the extent they are not inconsistent with those of the said Act, may be followed bearing in mind the limited jurisdiction and function of the probate Court."

32. However, it cannot be forgotten that the purpose of converting a proceeding into a suit, when there are conflicting contentions, is to enable the parties to place their respective cases before the Court through pleadings, to adduce evidence in support of their rival contentions, and to bring the relevant facts and circumstances on record. It can no longer be a summary proceeding. On the basis of the materials thus brought on record by the contesting parties, the probate court has to decide whether the reliefs sought by the plaintiff can be granted. To arrive at such a conclusion, the Court is necessarily required to address the issues raised and render appropriate findings thereon. Such an exercise is not beyond the scope of

probate proceedings, though, as pointed out above, the suit cannot be treated as a regular suit under the Code of Civil Procedure. On a careful scrutiny of the impugned judgment, I am of the view that the learned Additional District Judge has not transgressed the limits. It is well within the authority of the probate court to find out as to whether the Will is the last testament of the testator and it was properly executed and attested. Examining whether there is any obliteration, interlineation, or alteration and deciding its effect in tune with the provisions of Section 71 of the Succession Act is necessarily a matter falling within the scope of enquiry by the probate court. Such an exercise cannot be equated with the examination of rights under the will. Therefore, I reject the contention of the appellants that the court below exceeded its jurisdiction as a probate court.

In the result, I find no merit in the contentions of the appellants. The appeal is therefore dismissed with costs. Impugned judgment shall stand affirmed.

Sd/-

S.MANU

JUDGE

MC