

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2015

CORAM

THE HON'BLE MRS. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

O.S.A.No.223 of 2013

Mohan R.Reve

...Appellant/Petitioner

Vs.

1.Premalata D.Reddi,
2.Ashalata S.Benegal
3.Hemalata J.Gonzales
4.Snehalata D.Kuntz
5.Priyalata N.Munim

...Respondents

Original Side Appeal filed under Order XXXVI Rule 11 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 24.01.2013 made in O.P.No.33 of 2012.

O.P.No.33 of 2012:

This petition praying that this Hon'ble Court be pleased that the petitioner may be allowed to prove the Will in common form, and that probate thereof, to have effect through and limited to the State of Tamilnadu may be granted to the petitioner.

For Appellant : Mr.S.Palani Rajan

For Respondents : Mr.A.Munirathinam

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This Original Side Appeal arises out of the dismissal of a petition filed by the appellant herein for the grant of probate in respect of the last Will and testament of one Mr.Reve G.Ramanjulu

Naidu dated 21.09.2002.

2. Heard Mr.S.Palani Rajan, learned counsel appearing for the appellant and Mr.A.Munirathinam, learned counsel appearing for respondents 1 to 5.

3. One Mr.Reve G.Ramanjulu Naidu died on 21.09.2002. It was claimed by the appellant that the deceased left behind a last Will and testament executed on 2.6.1994, at Bombay. It appears that the testator died, leaving behind him surviving one son and five daughters. The appellant herein was appointed under the Will, as its executor.

4. Therefore, the appellant filed O.P.No.33 of 2012, on the file of this Court under Sections 222, 225 and 276 of the Indian Succession Act, 1925, seeking the grant of probate and permission to prove the Will in common form. Notices were ordered in the said petition and the appellant examined himself as P.W.1 and filed the following documents.

"i) Ex.P1 - Original death certificate of the deceased G.Ramanjulu(Naidu).

ii) Ex.P2 - Original unregistered Will executed by the deceased. Photocopy of death certificate of mother of petitioner is filed.

iii) Ex.P3 - Photocopy of Release Deed dated 01.11.1954 executed by parental grandfather and parental uncle of petitioner in favour of petitioner.

iv) Ex.P4 - Affidavit of assets showing the net value of the property at Rs.19,80,000/-. The Will is said to have been attested by two attesting witnesses."

5. The appellant also examined one Mr.Dhires Hasmukh as P.W.2 to the effect that he was aware of the signatures of the attesting witnesses.

6. However, by an order dated 24.1.2013, a learned Judge of this Court dismissed the petition on the ground that none of the attesting witnesses were examined in terms of Section 69 of the Indian Evidence Act. Therefore, the appellant has come up with the above appeal.

7. During the pendency of the above appeal, the appellant, who is the only son of the testator, entered into a compromise with his five sisters. The memo of compromise reads as follows:

MEMO OF COMPROMISE

The Appellant/Petitioner and Respondents/Respondents begs to submit as follows:

1.The Respondents above named submits that they are the Legdal Heirs of Rave G Ramanujulu Naidu and the said Rave G Ramanujulu Naidu have executed a Will during his life time dated 02.06.1994 bequeathing the property in favour of one of the Legal heir namely Mohan R Reve, the appellant herein.

2.The Respondents further submits that the said Mohan R Reve, who is the appellant herein has filed above O.P.No.33 of 2012 before this Hon'ble Court for probating the Will and the same was dismissed by this Hon'ble Court on the ground that attesting witness have not been examined, as against the said order the appellant had preferred this appeal in O.S.A. The Respondent herein submits that the property was acquired by late Reve G.Ramanujulu Naidu, and he has every rights to bequeath the property the respondent herein only Legal heirs and the appellant and respondent have compromised the matter and the Respondent hereby agrees and admits that the Appellant shall have right to file probate the Will and the respondent no objection for allowing the above OSA No.223 of 2013.

3.The parties shall bear their own costs.

4.The Appellant and Respondents prays that this Hon'ble Court may be pleaded to allow the Original suit Appeal in OSA No.223 of 2013 and pass a compromise decree recording this Memo of Compromise and thus render justice."

8. Under the memo of compromise, all the legal heirs of the deceased testator have decided to acknowledge the truth and validity of the Will as seen from the above contents.

9. Despite the above memo of compromise, we directed the appellant to furnish proof as to whether the attesting witnesses were alive on the date of filing of the petition for grant of probate.

10. Today, the learned counsel for the appellant has filed the affidavit of P.W.2, clearly stating that both the attesting witnesses died on 2.12.2007 and 11.7.2010, respectively. The death certificates of both the attesting witnesses have also been filed. Therefore, the appellant could not have filed either the supporting affidavits of the attesting witnesses at the time of filing the main original petition or examined them as witnesses when the original petition came up for hearing. The only thing that could be expected of the appellant, as the executor of the Will, has been done by him by examining P.W.2 to identify the signatures of both the attesting witnesses. Hence, the appeal is allowed. The order of the learned single Judge is set aside. Issue probate. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

msk

To

The Sub-Assistant Registrar
Original Side,
High Court, Madras.

2 CCs to Mr.S.Palani Rajan, Advocate SR.No. 34926

2 CCs to Mr.A.Munirathinam, Advocate SR.No. 34927

JSV (CO)
PSI (16.07.2015)

O.S.A.No.223 of 2013

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