

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18 / 10 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.O.S.No.20 of 2010

K.K.Varathan

.. Plaintiff

Versus

1. Dhanalakshmi
2. Vittal
3. Meera
4. Mohan
5. Malarkodi
6. Anandavalli
7. N.Lakshmi
8. Minor Kiran

Rep by his Guardian Kannaki

.. Defendants

PRAYER: Petition for Letters of Administration annexed with Will under Section 232 and 276 of Indian Succession Act under Order XXV Rule 5 of O.S.Rules praying that Letter of Administration with the Will annexed may be granted to the petitioner as one of the legatees under the Will of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiff : Mr.G.Nagarajan

For Defendant : Mr.R.Kannan

J U D G M E N T

The Testamentary Original Suit is filed by the plaintiff for issuance of Letters of Administration for the Will and testament of deceased K.S.Kothandaraman, executed on 23.12.1985. The testator died on 22.11.1992 leaving behind the plaintiff and defendants 1 to 6 as legal heirs. The seventh defendant is the daughter-in-law of the testator, being the wife of one of the sons whose whereabouts not known, namely, K.Narasimhan. The testator was possessed of immovable property consisting of house and ground within the limits of Chennai. It is stated that the movable assets had already been settled by the testator himself. So far as the property under the Will is concerned, it was allotted by the Tamilnadu Housing Board and the sale consideration was payable in installments to the Housing Board. The mother and wife of the testator Rukmani died on 13.03.2000. The fourth son namely Mr.Narasimhan is said to have abandoned the house 15 years back and his whereabouts were not known. Hence, the seventh defendant, namely, Lakshmi, who is his wife, has been impleaded as party to the proceedings. As per the Will executed by Testator, the plaintiff is the sole beneficiary. The plaintiff had to continue to pay the sale consideration in installments payable to the Tamilnadu Housing Board after the death of the testator. It is stated

in the plaint that the testamentary original suit was filed for letters of administration after the period of installments is over. Hence, there was a delay in seeking Letters of Administration of the Will dated 23.12.1985.

2. Though the Original Petition was filed for Letters of Administration, in view of caveat filed by defendants 1, 3 and 8, it was converted into T.O.S.No.20 of 2010.

3. A joint written statement was filed by the said caveators opposing the grant of Letters of Administration in favour of the plaintiff. It is contended that the testator was affectionate to all the members of the family and there is no reason to exclude all of them and executed the Will only in favour the plaintiff. Secondly, it is contended that the Will was executed in suspicious circumstances, as one of the attestors of the Will is a close relative of the plaintiff's wife. It is further stated that the defendants had also contributed in paying the installments to the Tamil Nadu Housing Board, which was within the knowledge of the plaintiff. Admittedly, full payment of installments were not paid to the Tamil Nadu Housing Board by the Testator during his life time. Hence, the Will

executed by Father is non-est in law. The signature of the testator was also denied by the defendants. Hence, prayed for dismissal of the suit.

4. Based on the above facts, the following issues were formulated for trial.

- 1. Whether the Will dated 23.12.1985 propounded by the plaintiff to be the last Will and Testament of K.S.Kothandaraman is true, genuine and valid?*
- 2. Whether the plaintiff is entitled to the relief of the grant of Letters of Administration with the Will annexed?*

Issue No.1:

5. The defendants have opposed the grant of Letters of Administration on various grounds. It is stated that the deceased was not in sound mind and was not capable of understanding at the time of execution of the Will; that the Will was obtained by fraud and undue influence; that the testator did not know the contents of the document and there is no reason to disinherit the other legal heirs.

6. Admittedly, the plaintiff is the propounder of the Will and he is the sole beneficiary of the Will. The property mentioned in the Will is allotted in favour of the testator, the value of which, was payable in installments. The Will was attested by two attestors, namely, D.V.Subramanian and R.S.Balakrishnan. The said D.V.Subramanian is no more and the other attesor, namely, R.S.Balakrishnan has been examined as P.W.2. The defendants 2,4,6 and 7 have filed their consent affidavit and declared that they have no objection for granting Letters of Administration with the Will annexed in favour of the plaintiff.

7. In the proof affidavit filed by the plaintiff, he had specifically stated that the document, namely, the Will dated 23.12.1985 was registered as Document No.80 of 1985 at the Sub Registrar Office, Purasaiwalkam, bequeathing the said property in favour of the plaintiff. The plaintiff-P.W.1 has deposed that the testator had specifically given reasons for bequeathing the property only in his favour and not giving any share to the other children, who are the defendants. Admittedly, the plaintiff was taking care of the father till his death. As the propounder of the Will, taking keen interest in the execution of the Will, the burden is

on the plaintiff to prove the same.

8. It is stated by the plaintiff further that even during the life time of his father, he was paying the installments to the Tamilnadu Housing Board and even after the death of his father, being the sole beneficiary of the Will and who was in occupation of the Will mentioned property, the plaintiff continued to pay the installments of Rs.39,490/- at one stretch on 07.05.2010 and the balance as per Ex.P.6-Receipts. It is specifically stated by the plaintiff that his father died only after seven years after execution of the registered Will. During his life time, he had never revoked the Will. All the sisters, who are the defendants, were married and given sufficient sreedhana even during the life time of the father. One brother, namely, Mr.Narasimhan had abandoned the house and his whereabouts were not known. Hence, his wife was made as a party, who has got no objection for issuance of the Letters of Administration. As all the legal heirs were married and separated themselves, the plaintiff, being the only person living with his father and taking care of him till his death, the testator had decided to settle the

property in the name of the plaintiff.

9. In the Will, it is specifically stated that in the event of testator died, without paying full installments to the Tamilnadu Housing Board, the plaintiff being the sole beneficiary, was directed to make the balance of the payments and get the allotment transferred in his name and also get the sale deed in his name. Accordingly, the balance sale consideration was paid by the plaintiff. However, the sale deed was not executed, in view of the Court proceedings pending.

10. Even in the cross examination of P.W.1, it is stated that he was present at the time when the Will was registered. The said Will is also said to have been drafted by M.Gangadharan, document writer and was attested by D.V.Subramanian and R.S.Balakrishnan. One of the attestors D.V.Subramanian is no more. The said R.S.Balakrishnan had been examined as P.W.2. The sole surviving witness to the Will dated 23.12.1985 has stated in the proof affidavit, which reads as follows:-

*“3. I further state that accordingly aforesaid late
Sri.K.S.Kothandaraman signed the Will in our presence*

at his residence and myself, Sr.D.V.Subramanian had signed in the Will as witnesses No.2. Thereafter at about 2.00p.m. Myself and Sri.D.V.Subramanian accompanied late Sri.K.S.Kothandaraman to the Sub Registrar Office, Purasawalkam and late Sri.K.S.Kothandaraman presented the aforesaid Will before the Sub Registrar for registration, and we had also signed the Will at the Sub Registrar Office as witnesses and the Will was registered on the same date (i.e) on 23.12.1985. I state that the signature found in the Will was the signature of late Sri.K.S.Kothandaraman who signed in our presence.

11. The defendants were unable to extract anything different from P.W.2 during the cross examination. The deposition of P.W.2 witness was in consonance with Section 63 of the Indian Succession Act, 1925. Though the defendants have contested the suit raising objections, the burden is on them to establish those contentions. It is the case wherein the defendants are driven by emotions of not being included in the father's final Will. It is settled principle that law does not stand in the way of a man disposing of his self acquired property in the way he likes. That is the very purport of the Will, but at the same time, when a natural heir is disinherited, he is entitled to know why he has been disinherited. Admittedly, in the case on hand, the Will itself has divulged the reasons,

as to why the other heirs have been disinherited. It is specifically stated that the daughters were married in befitting manner and given appropriate sreedhana. The other sons also had already left the family and only the plaintiff was taking care of the father. The other brothers, who were also disinherited have given their consent for grant of Letters of Administration. It is only the three of the daughters, who are making the claim. However, the jurisdiction of the testamentary Court is only to decide the genuineness of the Will and cannot go into the question of title. The contention that the defendants also contributed in the payment of installments to the Tamil Nadu Housing Board in the purchase of the property is not supported by any evidence. Though it is claimed that the father was unduly influenced, the burden is on the person, who alleges it and the defendants have not taken any steps to discharge the burden raised on them.

12. The second contention that the Will was not produced immediately after the demise of the testator cannot be a reason to render the Will as fraudulent or untrue. The beneficiary in this case is the son of the testator, who decided to stay with his father till his end. In the

original petition filed for Letters of Administration itself, the plaintiff has clearly mentioned that, as the payment of installments due to the Tamilnadu Housing Board were completed only in the year 2010, the Original Petition could be filed only thereafter (i.e) 17 years, after the Will was executed. Admittedly, the Will was executed in the year 1985 and the testator died in the year 1992. As the testator himself died only after the period of seven years, the cause of action for filing of the Original Petition itself arose only in the year 1992. Though there is no period of limitation for filing Original Petition and for Letters of Administration, when there is an enormous delay, sufficient reasons should be pleaded in the plaint. In this case, the plaintiff seems to have awaited for the completion of payment of installments payable to the Housing Board and thereafter, had brought down the Will for the issuance of Letters of Administration. As the reasons caused for the delay is sufficiently explained, the same cannot be put against the plaintiff for rejecting the suit.

13. So far as the suspicious circumstances alleged in the execution

of the Will is concerned, in the instant case, the defendants have objected to the grant of Letters of Administration alleging that the circumstances surrounding the execution of the Will are suspicious. However, there is no real evidence to support their claim. The Will admittedly, being a registered one and the attestor being examined, the fact that the plaintiff was interested in taking active part in execution of the Will, as a propounder, loses its significance.

14. The learned counsel for the defendants contended that the onus is on the propounder to explain the suspicious circumstances to the satisfaction of the Court before the Court accepts the Will as genuine. Reliance was also placed on the decision of Hon'ble Supreme Court in *RAMCHANDRA RAMBUX -VS- CHAMPABAI AND OTHERS [AIR 1965 SC 354]*. However, in this case, the defendants who had alleged suspicious circumstances had not specifically discharged their burden by proving the same to the satisfaction of the Court.

15. It has been consistently held by the Hon'ble Supreme Court that there must be a real, germane and valid suspicious features and not

fantasy of the doubting mind. The natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be suspicious circumstances. Not all circumstances are suspicious in nature. A circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. Though the defendants had raised objections, yet have not specifically pointed out or proved as to whether the signature of the testator was not correct or he executed the Will in a feeble mind or the disposition of the property was unfair and unjust. Merely because the attesting witness is a close relative of the plaintiff, his evidence cannot be discarded.

16. Section 68 of the Indian Evidence Act forbids the using of a document which is required by law to be attested until at least by one attesting witness has been called for the purpose of proving its execution. Such execution includes not only the signing or affixing the marking of the testator to the Will but also the signing by the attestors in his presence. As stated earlier, the evidence of P.W.2, the attestor clearly spoken about the said attestation, as the law requires only one of them to vouch for the

authenticity of the Will and one of the witnesses have successfully been examined, the requirement by law is deemed to have been fulfilled. The mere fact that the plaintiff is a close relative of the witness is not a ground for rejecting the witness. Thus, the plaintiff has proved the due execution of the Will dated 23.12.1985 by examining the attesting witness. The defendants, though had raised objections, failed to establish the fact that the Will was forged or executed by undue influence. Hence, this Court is of the view that the Will is proved and the Letters of Administration is issued to the plaintiff.

17. In the result, this TOS is allowed. The plaintiff is directed to execute a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.), High Court of Madras, Chennai - 104. No costs.

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Index : Yes/No
Internet : Yes/No

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LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFF

Sl.No	Exhibits	Description of documents	Date
1	P-1	The allotment issued by the Tamil Nadu Housing Board in favour of Mr.K.S.Kothandaraman	04.07.1979
2	P-2	The registered Will executed by the father K.s.Kothandaraman in favour of the plaintiff	23.12.1985
3	P-3	The affidavit of the attesting witness Mr.R.S.Balakrishnan	-
4	P-4	The death certificate of K.S.Kothandaraman issued by the Health Officer, Corporation of Chennai	04.01.1993
5	P-5	The death certificate of the plaintiff's mother Rukmani Ammal issued by the Birth and Death Registrar, Corporation of Chennai	15.12.2000
6	P-6(series)	The receipts issued by the Tamil Nadu Housing Board for receipt of the monthly installments remitted by the plaintiff	-
7	P-7	The letter addressed by the Tamil Nadu Housing Board to the plaintiff	13.04.2010
8	P-8	The consent affidavit given by plaintiff's brother Mohan expressing no objection for granting Letters of Administration of the Will of the plaintiff's father	-
9	P-9	The consent affidavit given by plaintiff's brother Vittal expressing no objection for granting Letters of Administration of the Will of the plaintiff's father	-
10	P-10	The consent affidavit given by plaintiff's sister Anandavalli expressing no objection for granting Letters of Administration of the Will of the plaintiff's father	-
11	P-11	The death certificate of the plaintiff's sister Nirmala, issued by the Birth and Death Register, Corporation of Chennai	02.04.2008

PUSHPA SATHYANARAYANA, J.

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