

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2016

Pronounced on : 05.01.2017

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

T.O.S.No.6 of 2015

Dr.K.C.Rajaraman

.. Plaintiff

vs.

1. K.Meikandan

2. C.K.Vijayakumar

3. K.Bhanumathi

.. Defendants

Testamentary Original Suit filed for grant of letters of administration.

For plaintiff : M/s.G.Gokulavani

For Defendants : Mr.S.Sounthar

J U D G M E N T

The suit is originally filed as a petition for grant of letters of administration. As the respondents 3, 4 and 6 entered as caveators, the petition has been converted as Testamentary Original Suit.

2. The brief facts of the plaintiff's case are as follows:

The testator Chakrapani Achari, father of the plaintiff herein, executed a Will in the presence of the witnesses on 05.05.1982 and registered the same on 07.05.1982. The petitioner found the Will recently and immediately filed an application and sought grant of letters of administration.

3. The case of the defendants 1 to 3 is as follows:

The said Chakrapani Achari had five sons and one daughter and he has treated all his children equally and he never had an idea to bequeath his estate to any of the sons, excluding others.

Therefore, the defendants denied the genuineness and validity of the Will. They also denied the testamentary capacity of Chakrapani Achari to execute the Will on 05.05.1982. According to the defendants, Chakrapani Achari was not hale and healthy to understand the terms of the Will at the relevant time. There is no necessity for him to execute the Will in favour of one son excluding all other legal heirs. Further, the delay in coming to the Court after 25 years also is one of the suspicious circumstances attached to the Will. Further, it is the contention of the defendants that the plaintiff obtained the signatures of the defendants in some blank papers on the representation that their signatures are required to obtain change in EB service connection. Hence, prayed for dismissal of the suit.

4. On the above said pleadings, this Court has framed the following issues for trial and adjudication:-

- (i) Whether the execution of alleged Will dated 05.05.1982 by the deceased Chakrapani Achari is true and valid and not surrounded by suspicious circumstances?
- (ii) Whether the deceased Chakrapani Achari had sound testamentary capacity on the date of alleged execution of Will dated 05.05.1982 ?
- (iii) Whether the plaintiff is entitled to letters of administration as prayed for ?
- (iv) To what other relief, the plaintiff is entitled ?

5. On the side of the plaintiff, PW.1 and PW.2 were examined and Exs.P1 to P10 were marked. On the side of the defendants, second defendant was examined as DW.1 and no documents were produced on their side. The details of the documents are hereunder:-

Exhibits produced on the side of the plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	P.1	05.05.1982	Original Will of Mr.K.Chakrapani Achari
2.	P.2	--	Photo copy of death certificate of Mr.K.Chakrapani Achari
3.	P.3	--	Photo copy of Legal Heir certificate of Mr.K.Chakrapani Achari
4.	P.4	29.04.2013	Original affidavit of assets filed in O.P.No.664 of 2013
5.	P.5 Series (7 Nos.)	--	Original consent affidavits of the respondents, viz., Uma Maheswari, C.Pazhamalai, K.Meikandan, C.K.Vijayakumar, K.Muralitharan, K.Banumathi, Dr.C.Ganesan O.P.No.664 of 2013
6.	P.6	--	Copy of vakalath
7.	P.7 Series (10 Nos.)	--	Photos
8.	P.8 Series (2 Nos.)	--	Photos
9.	P.9	--	Photo
10.	P.10	--	Photo

Exhibits produced on the side of the defendants:

NIL

Witnesses examined on the side of the plaintiff:

PW.1. - Dr.K.C.Rajaramanan

PW.2. - T.Arumugam

Witnesses examined on the side of the defendants

DW.1 - C.K.Vijayakumar

6. Heard the learned counsel appearing for the plaintiff and the learned counsel appearing for the defendants and perused the records.

7. It is the contention of the learned counsel for the plaintiff that the Will is a registered one and Ex.P1 is the Original Will of Chakrapani. It was registered on 07.05.1982. The evidence

of PW.2, one of the attesting witnesses, clearly proves not only the execution, but also the attestation. There was no reason whatsoever for PW.2 to support the Will. The above fact clearly indicates that he is not an interested witness and his evidence clearly shows that the testator Chakrapani had testamentary capacity and executed the Will out of his own volition, without any influence whatsoever. Once the Will has been proved in the manner known to law, the burden shifts on the other side to discharge the burden. Except casual denial in the written statement, there were no suspicious circumstances whatever pleaded in the written statement.

8. It is the contention of the learned counsel for the plaintiff that though the Will written on 05.05.1982, the evidence of PW.2 clearly shows that the execution as well as the registration was taken place on the same day in their presence and the testator

has signed in the presence of attesting witnesses in a sound state of mind.

9. It is the further contention of the learned counsel that the defendants 1 to 3 are the children of one of the sons of the testator. The testator had five sons and one daughter. The living sons and the daughter of the testator and their legal heirs have not challenged the Will. In fact, they all had given consent affidavit for grant of letters of administration in favour of the plaintiff.

10. It is the further contention that at the time of Original Petition, these defendants also filed separate affidavits expressing their no objection for grant of letters of administration. Only in the later stage, they resiled from the affidavit. The above conduct of the defendants clearly shows that only in order to obtain unlawful enrichment over the property, they have taken such defence. The

mere delay in coming to the Court with a valid Will is not a ground to entertain a doubt about the Will. Hence, prays for grant of letters of administration.

11. Countering the above arguments, it is the contention of the learned counsel for the defendants 1 to 3 that the Will said to have been executed on 05.05.1982 and registered on 07.05.1982, same has seen the light of the day after 25 years. The testator died in the year 1988. Even after his death, properties stand in the name of the testator and no mutation was also taken place. This fact creates serious suspicion about the Will. Further, the plaintiff is well settled in life and he was working in abroad prior and after execution of the alleged Will. There was no reason in the Will for excluding other sons and daughters. This is also one of the serious suspicion attached to the Will.

12. It is the further contention of the learned counsel for the defendants 1 to 3 that there is lot of variations in the signature of the testator in every page. The style of the signature and the stroke differs with each other. In the Will, it is clearly mentioned that the testator was not able to walk. Whereas the evidence of PW.2 shows as if the testator has walked to the Registrar Office. The above circumstance clearly creates serious doubt about the capacity of the testator. The evidence of PW.2 does not prove the attestation and execution. Hence, prays for dismissal of the suit. In support of his argument, he has relied upon a Judgment reported in **2009 (3) SCC 687 (Bharpur Singh and others ..vs.. Shamsher Singh)**. In the light of the above submission, this Court has to decide the issues.

13. Issue Nos.1 and 2:

It is admitted case of both sides that one Chakrapani Achari

had five sons and one daughter. It is also undisputed that except defendants 1 to 3, who are the legal heirs of one Krishnaswami, others have not contested the Will. In fact others also filed consent affidavits for grant of letters of administration in favour of the plaintiff. The affidavits of the others were filed as Ex.P5 series. At any event, except DWs.1 to 3, others have not challenged the Will.

14. Now in the above said background, it has been seen whether the Will propounded by the plaintiff is proved in accordance with law.

15. Ex.P1 Will said to have been handwritten Will said to have been executed on 05.05.1982 and registered on 07.05.1982, when the same is carefully perused, the Will has been written by one Chakrapani Achari. The recitals of the Will show that he has

bequeathed his entire property in favour of the plaintiff and the reason for such bequeath is that since he was under the care and maintenance of the plaintiff, he is bequeathing the property in favour of him. The Will has been registered on 07.05.1982 on the file of Sub Registrar, Chidambaram. The properties comprised in the Will are the house properties - one situate at Chidambaram and the another at Villivakkam.

16. One of the attesting witnesses, one Arumugam, was examined to prove the execution and attestation of the Will by the said Chakrapani Achari. PW.2's evidence in entirety is carefully analysed. In his evidence, he has stated that the testator subscribed his signature in his presence and as well as the another attesting witness Velu Kannu, while he was in sound disposing state of mind. The entire evidence of PW.2 in the cross examination while carefully perused, PW.2 has asserted that the Will was

executed and registered on the same day i.e., on 07.05.1982. PW.2 Arumugam is aged about 77 years and has withstood the elaborate cross examination by the defendants' counsel. In the entire evidence, he has asserted that the testator was in sound state of mind at the time of executing the Will and he and another attesting witness Velu Kannu seen the testator signed the Will and the testator put his signature. He has submitted that they not only signed at the time of execution of the Will, but also at the time of registration. The entire evidence of PW.2 clearly prove one fact that the execution of the Will and the registration of the Will took place simultaneously. This fact is further established by the evidence of PW.2 himself. PW.2 asserted in his evidence that two days prior to the registration of the Will, the testator informed him about the registration of the Will and requested him to come to the Registrar Office. In fact, on the date of registration, the testator came to his tailoring shop along with another attesting witness,

viz., Velu Kannu and there after, they all went to the Registered Office. His evidence not only asserted the same in one place, but in entire cross examination, he asserted that on the date of registration, Chakrapani Achari has come to the shop, from there they went to the Registered Office only for the purpose of signing the attesting and Chakrapani Achari has signed the Will in their presence in the Registered Office. From the above positive admission and assertion by PW.2, this Court is able to come to the conclusion that the execution of the Will as well as the registration of the Will took place only on the same day and not as stated in the petition and the respective chief examination. It is to be noted that the date mentioned in the first line of the Will shows as if the Will was executed on 05.05.1982. Probably on seeing the above date found in the Will, the counsel appearing for the plaintiff as well as the defendants all along canvassed the case as if the Will was executed only on 05.05.1982. But the evidence of the attesting

witness clearly shows that the Will was executed and registered on 07.05.1982. Therefore the mere some differences pleaded in the suit/petition as to the date of execution and subsequent registration may not be a ground to doubt the entire execution as well as registration of the Will by the testator. In the evidence, this Court could not find any suspicious circumstance attached to the Will except one circumstance that the testator contrary to the recital in the Will that he was not able to walk, he went to the Registered Office by walk, no other serious circumstance whatsoever established in the evidence of PW.2.

17. PW.2 appears to be relative to all the parties. There is no motive whatever attributed against him for supporting the Will. He is in fact in his evidence clearly indicate that he is a disinterested witness and he had tendered his evidence after a gap of 34 years after the execution of the Will. Due to the passage of

time, some minor inconsistencies about the manner in which the testator went to the Registrar Office bound to be there in his evidence. Therefore, this Court is of the view that such a minor inconsistency found in the evidence of PW.2 is not sufficient to doubt the genuineness of the Will which is legally proved.

18. It is an admitted fact of both sides that the testator died only in the year 1988. The Will was executed in the year 1982 and the testator lived thereafter some more six years. DW.1's evidence carefully perused. Though PW.1 come forward with some photographs, which was also marked without the negative or memory card, the admission of DW.1 clearly shows that the testator attended the functions in the family in the year 1987. He has also admitted that the plaintiff has used to pay some amount for maintenance of the house, where the defendants living. In fact, the above property is also one of the subject matter of the

property. He has also admitted that in the year 2006, the plaintiff has paid 75% of the amount towards the construction of the compound wall in the property, which is the subject matter of the Will. It is also admitted by DW.1 that other property which is situated in Chidambaram is in possession of the plaintiff. Of course, these facts did not require to test the genuineness of the Will. But the above conduct of the parties has also assume significance.

19. Other sons of the testator have not challenged the Will. In fact, some of them have filed consent affidavits also. It is curious to note that the defendants 1 to 3 have filed the affidavits of 'No objection'. Subsequently, they filed caveat. It was pleaded in the Written Statement that the plaintiff obtained their signatures on the representation that the same are required to obtain change in the EB service connection. But in the evidence, DW.1 has took different stand in the cross examination that the signatures in the

blank papers were obtained only to claim the property. It is to be noted that admittedly, there is dispute between DW.1 and the plaintiff in respect of the property, which is subject matter of the Will. It is also admitted that only DW.1 is residing in the property. That may be the reason for resiling from his affidavit at the later point of time. Other living sons of the testator have also filed affidavits supporting the Will. These facts clearly indicate that the Will was not objected by any one. Only a person, who is in possession of the property has filed caveat. His written statement also does not show any suspicious circumstance suspecting the Will. That apart, the evidence of PW.2 clearly establishes the execution and registration of the Will on 07.05.1982. Therefore, merely because it was pleaded that the Will was executed on 05.05.1982 on the basis of the date mentioned in the Will, if the Will is otherwise genuine and established according to law, cannot be defeated merely on the basis of the pleadings, which were normally

set by the counsel of the parties.

20. The evidence of PW.2 not only proves the execution, but also attestation. Once the execution and attestation of the testator is proved in the manner known to law by examining one of the attesting witnesses, the burden shifts on to the other side to prove the so-called suspicious circumstance.

21. It is argued by the learned counsel for the defendants that the signature of the testator differed in every page. This Court, on seeing the Will could not make out any such difference. Similarly, an another ground of suspicious circumstance that the Will was produced after 25 years. It is an admitted fact that the plaintiff was working in various countries and he has returned to India only in the year 2006. Therefore, the mere delay in producing the Will itself cannot be a suspicious circumstance attached to the

Will, when the Will itself proved to be genuine and its execution and attestation proved in the manner known to law. It is further to be noted that if there was no Will whatsoever executed by the said Chakrapani Achari, the conduct of the other legal heirs, who also very much present and other sons not taking any steps for partition of the property also shows that they were also aware of the Will, so that they have not taken any steps for partition of the properties.

22. Another circumstance argued by the learned counsel for the defendants is that other legal heirs were excluded and the reason was also not given for that. On perusal of Ex.P1 Will, the testator has clearly mentioned that he is residing in Chidambaram and he was under the care and maintenance of the legatee, who was working in Malaysia at the relevant time. It is to be noted that as per the evidence of DW.1, other sons of the testator also well settled in their life and they were living in different parts.

Therefore, merely because they were excluded in the Will, that will not be a ground to suspect the Will. The evidence of PW.2 in fact clearly established the testamentary capacity as well as the execution and attestation of the Will. Therefore, the contention of the learned counsel for the defendants that the Will is shrouded with serious suspicion cannot be countenanced.

23. The judgment relied upon by the learned counsel for the defendants reported in **2009 (3) SCC 687**. In the same judgment, the Hon'ble Supreme Court has clearly held as follows:-

" It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more

attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator.

The fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. The propounder of Will must prove : (i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified

in making a finding in favour of propounder."

24. In the judgment reported in **2001 (3) CTC 283 (Corra Vedachalam Chetty ..vs.. G.Janakiraman)**, this High Court has held as follows:-

"Succession Act, 1925, Section 63 - Suspicious circumstances - failure to produce Will for probate immediately after demise of testator by itself will not render Will fraudulent or untrue - Will being produced by beneficiary will not render Will untrue - Caveators failed to point out circumstances to render Will untrue - Will held to be genuine."

25. Having regard to the above judgments and taking into consideration of the entire evidence and the evidence of PW.2 ie., one of the attesting witnesses, other attesting witness said to have

been died, which is also not denied by the other side, this Court is of the view that the testamentary capacity of the testator has been clearly established while executing the Will and the alleged suspicious circumstance attached to the Will has not been established. Accordingly, these issues are answered in favour of the plaintiff.

26. Issue Nos: 3 and 4:

In view of the discussions held above in Issue Nos.1 and 2 that the Will propounded has been proved in the manner known to law and the properties bequeathed in favour of the plaintiff - one situate at Chidambaram and another at Villivakkam, the plaintiff is certainly entitled to grant of letters of administration. Accordingly, decree is passed for grant of letters of administration. These issues are answered accordingly.

27. In the result,
- (i) The suit is decreed;
 - (ii) The letters of administration, having the effect limited to the State of Tamil Nadu, shall be issued in favour of the plaintiff in respect of the properties bequeathed to him in the Will dated 05.05.1982;
 - (iii) The plaintiff is directed to duly administer the estate of the deceased;
 - (iv) The plaintiff shall execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S - II), High Court, Madras.
 - (v) The plaintiff is further directed to render true and correct accounts once in a year.
 - (vi) No costs.

05.01.2017

Index : Yes / no

Internet : Yes / no
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N.SATHISH KUMAR, J

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Pre-delivery Judgment in

T.O.S.No.6 of 2015

05.01.2017

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To

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

humbly submitted

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P.A.

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