

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2017

DELIVERED ON : 27.03.2017

CORAM

THE HON`BLE MR.JUSTICE T.RAVINDRAN

**T.O.S.No.31 of 2011
in
(O.P.No.678 of 2009)**

M.Shankar Rao

.. Plaintiff

Vs.

Janabai Bakthavatchalam

.. Defendant

Original Petition No.678 of 2009 was filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 for the probate with a grant of letter of administration of the Will dated 19.05.1998 of the deceased N.Pattammal. Against this petition a Caveat was filed on 1st day of March 2011 by the Caveator. The supporting affidavit was filed on 15th day of March 2011. As per order of Court dated 14.06.2011 in O.P.No.678 of 2009, the original petition is directed to be converted into Testamentary Original Suit No.31 of 2011.

For Plaintiff : Mr.K.Magesh

For defendant : Mr.R.Manickavel

J U D G M E N T

The averments contained in the plaint/petition filed under Section 232 and 276 of the Indian Succession Act, R/w Order XXV Rule 4 of O.S.Rules.

The deceased N.Pattammal, grandmother of the petitioner/plaintiff is ordinarily residing at No.41/20, 72 Street, R.V.Nagar, Jafferkhanpet, Chennai - 600 083 and she died on 06.12.2007, leaving behind the petitioner/plaintiff, who is her grandson (son of predeceased son) and Mrs. M.Kanthabai, wife of predeceased son and Mrs.Janabai Bakthavatchalam, her daughter. The husband and son of the deceased N.Pattammal predeceased her. The deceased N.Pattammal obtained lease of vacant plot situated in Plot No.22, survey No.384 and 386 belonging to Arulmighu Chelliamman Devasthanam, Velachery and thereafter, constructed a house therein. The writing hereto annexed and marked with letter "A" is the last Will and testament of the deceased N.Pattammal and the same was duly executed by her at New No.26, Old No.23, Chelliamman Nagar, Velacherry, Chennai - 600 042, on 19.05.1998 in the presence of witnesses whose names appear at the foot thereof. The same was registered as document No.18/1998, Book No.3 on the file of the Sub Registrar of Velacherry on 20.05.1998. The petitioner has been appointed as the executor in the Will dated 19.05.1998. The petitioner /plaintiff has impleaded all the next of kin or other person interested as party/respondents. The amount of assets, which are likely to come into the hands of the petitioner/plaintiff does not exceed in the

aggregate sum of Rs.2,00,000/- and no application has been made to any District Court or delegate or to any other High Court for the probate of any Will of the deceased or letters of Administration, with or without the Will annexed of her property and credits. The petitioner/plaintiff undertakes to duly administer the property and credits of the deceased N.Pattammal in any way concerning her Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit within 6 months from the date of grant of probate to the petitioner/plaintiff and also, render to the Court a true account of the property credits within one year from the said date.

2. The petitioner/plaintiff may be allowed to prove the Will in common form and that, the probate thereof to have effect limited the State of Tamil Nadu may be granted to him and necessary orders be passed thereon.

3. The above mentioned O.P.No.678 of 2009 had been laid by the petitioner in the matter of the last Will and the testament of N.Pattammal, the deceased and as regards the said petition, caveat was filed on 01.03.2011 by the caveator Janabai Bakthavatchalam

and as per the order of the Court dated 14.06.2011 in O.P.No.678 of 2009, the original petition was directed to be converted into testamentary original suit.

4. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The petitioner/plaintiff is the son of the defendant's deceased brother and the petitioner/plaintiff and his mother are the legal heirs of the defendants' deceased brother N.Mohan Rao. The defendant deny that her mother the deceased N.Pattammal was ordinarily residing at No.41/20, 72nd Street, R.V.Nagar, Jafarkhanpet, Chennai 600 083. She was residing along with the defendants' family at No.16/189, Palanai Aandavar Koil Street, Ayanavaram, Chennai – 600 023 looking after her children as the defendant was working as staff nurse in Kuwait. Pattammal, the deceased, had obtained the lease of vacant plot bearing Plot No. 22, Survey Nos.384 & 386, Selliamman Nagar, Velacharry, Chennai – 600 042 from the Selliamman Temple and it is false to state that she bequeathed the said property in favour of the plaintiff under a Will dated 19.05.1998 and the same had been registered at the SRO of Velacherry. It is false to state that the

petitioner/plaintiff has been appointed as the executor under the above said Will. The defendant was working as nurse in the Port Trust Hospital, Chennai and thereafter, working as Senior Staff Nurse in Kuwait and the defendant's family members are residing No.16/189, Palani Andavar Koil Street, Ayanavaram, Chennai – 600 023 and it is the defendant, who had taken care of and looking after the entire family consisting of her parents, her brother's family and her own family out of her income from her earnings at abroad and the petitioner/plaintiff's family was also maintained only by the defendant and the petitioner/plaintiff's educational expenses were bone out by the defendant. It was the defendant, who had been looking after her mother Pattammal and spent for the entire medical expenses of her mother. It is only the defendant, who had let out the property, bearing Door No.26, old door No.23, Selliamman Nagar, Velacherry, Chennai – 600 042, after the death of her mother, to a tenant namely M/s.Hitech Pest Control Service and they were paying monthly rent of Rs.5,500/-. The entire building in the said plot was constructed by the defendant out of her fund and neither her mother Pattammal nor her brother N.Mohan Rao contributed any funds for the construction. The defendant had been paying all the taxes in the name of Pattammal, even during her lifetime and subsequent to her death. Since the

defendant was employed at Kuwait, she had authorised the petitioner to collect the rent from the tenant. Since the petitioner/plaintiff acted indifferently, the defendant cancelled the authorization given to him and communicated the same to the tenant also. The defendant also lodged a police complaint against the petitioner as he prevented the tenant from collecting the rent. The projected Will is a fabricated document by the petitioner/plaintiff to grab the property. The defendant's mother had sent numerous letters to the defendant demanding money for the construction in the above said property and the signature of her mother in the said letters would amply prove that the projected Will is a forged one. The Will had not been executed by the deceased Pattammal and the same had also not been disclosed for several years by either Pattammal or the petitioner/plaintiff. The projected Will is not a genuine document and without the knowledge of the defendant, who had been looking after her mother, her mother would not have executed any Will. Even after the death of her mother, the Will was not disclosed by the petitioner/plaintiff. The witnesses who are alleged to have attested the Will are stock witnessess and the testator was not in a sound and disposing state of mind on the date of the execution of the alleged Will. The Will is not a genuine document and hence, the suit is liable to be dismissed.

5. On the basis of the above said pleadings, the following issues are framed for determination.

"(i) Whether the Will dated 19.05.1998 executed by N.Pattammal in favour of plaintiff herein is genuine?

(ii) Whether Late N.Pattammal was in sound and disposing state of mind at the time of execution of the alleged Will?

(iii) To what other reliefs, the parties are entitled to?"

6. In support of the petitioner/plaintiff's case, PWs 1 & 2 have been examined and Exs.P1 to 5 were marked. On the side of the defendant, DW1 has been examined and Exs.D1 to 4 were marked.

7. ISSUE Nos.1 & 2

The petitioner/plaintiff laid O.P.No.678 of 2009 in the matter of the last Will and testament of the deceased N.Pattammal dated 19.05.1998 and on the caveat being filed by her daughter Janabai Bakthavatchalam in the matter, the above mentioned Original Petition was directed to be converted into Testamentary Original Suit and accordingly, the Original Petition had been converted into Testamentary Original Suit.No. 31 of 2011.

8. The petitioner/plaintiff is the grandson of the deceased N.Pattammal and the defendant, Janabai Bakthavatchalam, is the daughter of the deceased N.Pattammal. It is admitted that the petitioner/plaintiff's father, the deceased N.Mohana Rao and the defendant, Janabai Bakthavatchalam are the children of the deceased N.Pattammal. It is also admitted that the husband of the deceased N.Pattammal and her son N.Mohana Rao predeceased her. Therefore, it could be seen that as such, the petitioner/plaintiff and his mother M.Kanthabai and the defendant, Janabai Bakthavatchalam are the legal heirs of the deceased N.Pattammal. As regards the above facts, there is no issue.

9. As seen from the case of the parties and also the evidence adduced in the matter, it is found that the deceased N.Pattammal had obtained the lease of the vacant land situated in Plot No.22, survey No.384 and 386 belonging to Arulmighu Chelliamman Devasthanam, Velachery and thereafter, constructed a house therein. Though the defendant would claim that it is she, who had put up the house construction on the above mentioned plot out of her own funds, as regards her above case, there is no material forthcoming. On the other hand, it is seen that it is only the deceased N.Pattammal, who

had taken the above mentioned property on lease from the Selliamman Temple and put up the house construction therein and also residing therein and subsequently, let out the same to the tenant.

10. As regards the above mentioned property, as per the case of the petitioner/plaintiff, the deceased N.pattammal had bequeathed the same in his favour under the Will dated 19.05.1998. The said Will has been marked as Ex.P5. Now, according to the defendant, the Will marked as Ex.P5 is a fabricated document and not executed by her mother and further, according to her, it is only she, who had been looking after her mother and also other family members out of her income and in such view of the matter, according to the defendant, there is no reason for her mother to exclude her and bequeathe the property above mentioned only in favour of the petitioner/plaintiff and thus, according to the defendant, in order to grab the property, the Will marked as Ex.P5 had been forged and fabricated by the petitioner/plaintiff and the same had not been executed by her mother in a sound and disposing state of mind and hence, no right would flow to the petitioner/plaintiff under the said Will.

11. In the light of the above defence set out by the defendant, it is for the plaintiff to establish that as pleaded by him, his grandmother N.Pattammal, the deceased, had bequeathed the property above mentioned in his favour under the Will dated 19.05.1998 voluntarily and in a sound and disposing state of mind and that, the above said Will is a genuine document.

12. In order to substantiate his case, the petitioner/plaintiff has examined one of the attestors to the Will Ex.P5 viz., A.Munusamy as PW2. PW2 in his evidence has deposed that on 19.05.1998, he was present along with V.Elango, at New No.26, Old No.23, Chelliamman Nagar, Velacherry, Chennai – 600 042 and at that point of time, he and other witnesses saw the deceased set and subscribe her name at the foot of the Will marked as Ex.P5 and thereupon, he and the above said V.Elango, at the request of the deceased N.Pattammal, in her presence and in the presence of each other all being present at that time set and subscribe their respective names and signature at the foot of the Will as witnesses thereto and he has further deposed that the name and signature subscribed at the foot of Ex.P5 as of the party executing the same is in the proper handwriting of the deceased N.Pattammal and the name, signature of the Will as of the parties

attesting execution of the same are in the proper and respective handwritings of the said V.Elango and himself respectively and the above said Will was executed by the deceased N.Pattammal in a sound and disposing state of mind and understanding and the same was executed by her out of her free will and pleasure.

13. The evidence of PW2 as narrated above would go to show that he has deposed very clearly that the deceased N.Pattammal, in a sound and disposing state of mind, had executed the Will Ex.P5 bequeathing the property belonging to her in favour of the petitioner/plaintiff and that, he and the other attesting witness V.Elango had seen her executing a Will in a sound and disposing state of mind and understanding out of her free will and volition and the testator had also witnessed their attestation in the Will and that, they had attested the Will in her presence and thus, it could be seen that the petitioner/plaintiff has established the execution of the Will by the testator through PW2 as required under law.

14. As adverted to earlier, according to the defendant, Ex.P5 Will had not been executed by her mother N.Pattammal, the deceased and the same had been forged and fabricated by the petitioner/plaintiff in order to grab the property mentioned therein.

15. It is specifically contended by the defendant that several letters had been written to her by her mother and a perusal of the signature found in the said letters with the signature found in Ex.P5 would go to disclose that her mother the deceased N.Pattammal had not executed the Will in question viz. Ex.P5. Despite the above defence, the defendant had not cared to mark any of such letters alleged to have been written to her by the deceased N.Pattammal. No reason is assigned for the same.

16. Despite the cross examination of PW2 by the defendant's counsel, nothing has been elucidated from him to discredit his evidence with regard to his testimony regarding the execution of the Will Ex.P5 by the testator in a sound and disposing state of mind and also, the attestation of the same by him and V.Elango, the other witness in the presence of the testator. In this connection, PW2 during the course of cross examination has also asserted that the testator put her signature in the Will in the presence of Panchayatars at her residence at Velacherry and the Panchayatars were present on the occasion of execution of the Will and he remember that the name of the other witness, who signed along with him is one Elango and he is also his friend and he knew contents in the Will and put his signature

after reading the Will. Therefore, it could be seen that PW2 has reiterated even during the course of cross examination that Pattammal had executed the Will Ex.P5 in a sound and disposing state of mind in his presence and in the presence of the other witness V.Elango and he had put his signature after reading the Will. The perusal of the series of suggestions put to PW2 by the defendant's counsel would go to show that nothing has been suggested to him that the Will is a fabricated one. What had been suggested to PW2 is that he does not know the execution of the Will personally by Pattammal and that he was not present at the time, when Pattammal subscribed the signature in the Will and that, he did not put signature in the Will before the testator and that, he is a stock witness. PW2 had denied all the suggestions. Therefore, it could be seen that specifically, it has not been suggested to PW2 that the Will had been fabricated and forged by the petitioner/plaintiff with the help of his henchmen.

17. It is contended by the defendant's counsel that the presence of Panchayatars as spoken to PW2 would go to show that the deceased Pattammal would not have executed the Will on her own and some third force would have been involved in the creation of the said document. However, merely because, some panchayatars were stated

to be present at the time of the execution of the Will by Pattammal by PW2, that would not lead to the conclusion that Pattammal would not have executed the Will out of her own free will and volition. It is normally seen that Wills are being executed by the testators concerned only in the presence of the Panchayatars and also in the presence of persons known to them and accordingly, it could be seen that the deceased Pattammal had executed the Will in the presence of Panchayatars and in the presence of witnesses concerned.

18. It is contended that the presence of the advocate, who had scribed the Will, has not been properly spoken to PW2 and therefore, his evidence should not be accepted. No doubt, PW2 has not spoken to about the presence of the advocate, who had scribed the Will. But in my considered opinion, the same would not in any manner affect the veracity and the authenticity of the testimony of P.W.2 as regards the proof of the Will concerned. The reading of the evidence of PW2 adduced both during the Chief examination and cross examination cumulatively would go to show that he has clearly deposed about the execution of the Will Ex.P5 by the deceased N.Pattammal in a sound and disposing state of mind and the attestation of the same by him and the other witness and the witness of the same by the testator and

thus, it could be seen that through the evidence of PW2, the petitioner/plaintiff has established the proof of the Will in the manner required under law.

19. It is not the case of the defendant that the deceased N.Pattammal is not competent to bequeath the property mentioned in the Will. It is accordingly found that the petitioner/plaintiff being the grandson of the deceased through her only son, who had already predeceased her, it could be seen that she had naturally bequeathed her property in favour of her grandson under Ex.P5. It is argued by the defendant's counsel that she being her only daughter, there is no reason for her mother to exclude her and therefore, the said fact alone would go to show that the Will is a fabricated document. Even as per the case of the defendant, she is well placed. It is found that she is working as a nurse and also employed in abroad and earning good income. Even as per the case of the defendant, it is she, who had been looking after even her brothers' family including the petitioner/plaintiff out of her income/earnings. Therefore, it could be seen that considering the status of the petitioner/plaintiff, who is the grandson and also her only son having died leaving behind the petitioner, it could be seen that the deceased N.Pattammal, on account of love and

affection towards the petitioner/plaintiff and also considering the financial strength of the defendant, her daughter, had chosen to bequeath the property belonging to her in favour of her grandson. Therefore, the mere fact that the deceased Pattammal had excluded her daughter and bequeathed her property in favour of grandson alone would not ***ipso facto*** lead to the conclusion that the Will Ex.P5 would be a fabricated document.

20. The Will Ex.P5 is dated 19.05.1998. It is admitted that Pattammal, the deceased, died on 06.12.2007. Therefore, it could be seen that only 9 years after the execution of the Will Ex.P5, Pattammal had died. There is no material forthcoming on the part of the defendant that it is only she, who had been looking after her mother Pattammal. The medical bills produced by her marked as Ex.D2 series would not in any manner advance her case. The bills are found to be of the year 2006. Merely because, the name of N.Pattammal had been written therein, it could not be construed that the medicines purchased thereunder had been intended only for the deceased health and well being. The authors, who had issued the bills or the doctor at whose instance the medicines mentioned therein had been purchased had not been examined. That apart, it has not been established by the

defendant that her mother had been looked after by her, during the relevant point of time. It is found that even as per the admitted case of the defendant, she had been employed in Kuwait as a nurse. Therefore, it could be seen that her mother would not have chosen to reside with her son-in-law. On the other hand, she would have chosen to reside either separately or with her sons family the petitioner/plaintiff. Therefore, the case of the defendant that her mother had been residing with their family at Ayanavaram as such cannot be readily accepted. That apart, as rightly contended by the petitioner/plaintiff's counsel, if really the deceased had been residing with the defendant as put forth by her, naturally the medicines would have been purchased at Ayanavram. However, the medicine bills Ex.D2 series are stated to have been purchased from a shop located at Elephant Gate Bridge Road, Chennai - 600 003. It is further found that as seen from the number of the bills, they are not in sequence. Therefore, it is highly doubtful, whether Ex.D2 series are true documents and related only to the deceased N.Pattammal. The possibility of the defendant procuring such bills, particularly, considering her avocation as a nurse by using her influence cannot be ruled out. Therefore, Ex.D2 series cannot be specifically relied upon to uphold the case of the defendant.

21. It is contended by the defendant that it is she, who had let out the property in question to the tenant and that, it was she, who had been collecting the rent. However, with reference to the above plea, there is no material. On the other hand, it has been admitted by the defendant herself that she had authorized the petitioner/plaintiff to collect the rent from the tenant. But the above case of the defendant has been denied by the petitioner/plaintiff. On the other hand, it is the case of the petitioner/plaintiff that it was he, who had been collecting the rent from the tenant as per the authority given to him by the deceased Pattammal. Therefore, it is found that in the absence of the evidence that the petitioner/plaintiff had been collecting the rent from the tenant on the authorization given by the defendant and when it is found that the property in question had been bequeathed to the petitioner/plaintiff by the deceased Pattammal under the Will Ex.P5, it could be seen that accordingly, the petitioner/plaintiff had been collecting the rent from the tenant without any relation to the defendant and accordingly, it is found that the defendant is unable to place any material to show that the tenant had accepted her as the landlord at any point of time. Equally, it is found that the defendant has failed to establish that the petitioner/plaintiff had been collecting

the rent only under her authority. Per contra, it could be seen that the petitioner/plaintiff on his own under the authority given to him under the Will is found to be collecting the rent from the tenant in question.

22. The petitioner/plaintiff, during the course of cross examination, has pleaded that he is not directly aware of the execution of the Will and the registration of the same. The same cannot in any manner undermine the petitioner/plaintiff's case. Similarly, the plea of the attesting witness PW2 that he is not aware of the registration of the Will at the sub registrar office would also not in any manner affect the petitioner/plaintiff's case. Admittedly, when PW2 is not the identifying witness at the Registrar office, he need not be aware of the events that had occurred at the time of the registration. That apart, the defendant has not placed any material to show that the Will had not been properly registered as required under law. Further, it is found that the presumption could be taken that the official acts of registration have been regularly performed. Nothing has been projected by the defendant to show that the Will had not been duly and properly registered as per law.

23. In the light of the above discussions, I hold that the petitioner/plaintiff has established that the Will dated 19.05.1998 executed by Pattammal in his favour is a genuine document and that the same had been executed by the deceased N.Pattammal in a sound and disposing state of mind. Accordingly, issue Nos.1 & 2 are answered in favour of the petitioner /plaintiff.

24. Issue No.3

In the result, the Testamentary Original suit is decreed as prayed for and Probate with a grant of letter of administration is granted to the plaintiff as prayed for in respect of the Will dated 19.05.1998 of the deceased N.Pattammal. The registry is directed to comply with other formalities for issuing the probate as above. No costs.

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