

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18907 of 2013
& M.P.No.1 of 2013

Dr.A.Shivanraj

... Petitioner

vs.

1. The District Registrar,
Chennai South, Jones Road,
Saidapet, Chennai 600 015.
 2. The Sub-Registrar,
(In the cadre of District Registrar),
Anna Nagar, Chennai 600 040.
 3. A.Rajakumari
 4. A.Jeevagan
 5. A.Arulnithi
 6. Chandramohan
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to the proceedings in No.6/2013, dated 07.03.2013, on the file of the 2nd respondent, quash the same and direct the first and second respondents to hold an enquiry as per Rules 69 and 70 of the Registration Rules in respect of the alleged Will said to be executed by K.M.Ayyanathan, son of K.E.Mariappa Thevar, resident of No.12/25, First Cross Street, East Shenoy Nagar, Chennai 600 030, presented by the 6th respondent herein for registration in the office of the 2nd respondent.

For Petitioner	:	Mr.D.Veerasekaran
For Respondents 1 & 2	:	Mr.S.Diwakar, Special Government Pleader
For Respondents 3 to 5	:	No appearance
For 6th Respondent	:	Mr.J.R.K.Bhavanantham

O R D E R

The petitioner has come forward with this petition to call for the records relating to the proceedings in No.6/2013, dated 07.03.2013, on the file of the 2nd respondent, quash the same and direct the first and second respondents to hold an enquiry as per Rules 69 and 70 of the Registration Rules in respect of

the alleged Will said to be executed by K.M.Ayyanathan, son of K.E.Mariappa Thevar, resident of No.12/25, First Cross Street, East Shenoy Nagar, Chennai 600 030, presented by the 6th respondent herein for registration in the office of the 2nd respondent.

2. The case of the petitioner is that the petitioner is the youngest son of K.M.Ayyanathan and during his life time, he had purchased several movable and immovable properties, apart from that, he had fixed and recurring deposits in various banks. The petitioner's father died intestate on 03.12.2012, leaving behind the petitioner and the respondents 3 to 5 as his surviving legal heirs. The petitioner came to know in the month of March 2013 that the respondents 3 to 6 have approached the 2nd respondent herein for registering a Will, said to have executed by his father, while he was alive. Hence, the petitioner filed an objection before the 2nd respondent, not to register the alleged Will. The second respondent vide his proceedings in No.6/2013, dated 07.03.2013 informed the petitioner that there is no provision under the Registration Act and Rules to refuse to register if the documents are in order. Against the said proceedings, the petitioner has filed this petition with the above said prayer.

3. The learned counsel for the petitioner contended that there should be an enquiry as per Rules 69 and 70 of the Registration Rules in respect of the so-called Will said to have been executed by K.M.Ayyanathan and presented by the 6th respondent herein. It is his further contention that the Will is a forged one and that the authorities will have to enquire into the same and file a criminal case, if the Will is found to be a forged one.

4. The learned counsel appearing for the 6th respondent drew the attention of this Court to Section 40 of the Registration Act, 1908 and also to Rules 69, 70, 71(3) and 75 of the Registration Rules and contended that the Will is a genuine one and that after the death of the person, who has executed the Will, the Executor under the Will, will present it to any Registrar or Sub-Registrar for registration.

5. The learned Special Government Pleader appearing for respondents 1 and 2 submitted that there is no forgery at all and that in terms of Rule 71(3), the Registering Officer, who refuses to register a document, shall make an endorsement and return the document for further action.

6. In reply, the learned counsel for the petitioner submitted that in terms of Rule 55 of the said Rules, it is the duty of the Registering Officer to enquire into the validity of the document and decide as to whether the document is a forged

one or not. Now that the Registrar has decided not to register a document, the question of further enquiry under Rule 55 of the Registration rules is not available.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. Though it is correct on the part of the petitioner to contend that in terms of Rule 55, the Registering authority has got powers to decide about the forgery of a document, if any, raised by the authority, without going into the registration aspect, based on the objection of the petitioner, the Registrar has to decide to return the document and the 6th respondent submitted that he may or may not present the Will for probating.

9. In view of the submissions made by the learned counsel for the parties, without rendering any finding as to the genuineness of the document, the document in the Sub-Registrar Officer will have to be xeroxed, copy of the same shall be given to the respondents, and one copy shall be retained by the Sub-Registrar, after scanning the same and if any steps are taken to probate the Will, the petitioner shall also be heard by appropriate Court.

10. The learned counsel appearing for the 6th respondent submitted that the 6th respondent is not going to present the Will for registration, however, he will probate the Will and that the writ petitioner is a plaintiff in the suit for partition.

11. If the original documents are not going to be produced by the contesting 6th respondent, the colour xerox shall be produced by the petitioner, which shall be taken into account for deciding the issue.

12. The parties are at liberty to raise their contentions before the concerned forum, which shall be considered by the authority concerned, on merits and in accordance with law and any observation made by this Court in this writ petition, touching the merits of the matter, is only for the purpose of disposal of this writ petition and it will have no bearing with regard to the proceedings that are pending or that may be initiated either by the petitioner or by the contesting 6th respondent before the appropriate forum. The original Will has to be handed over to the 6th respondent by the Sub Registrar concerned. A certified copy of the colour xerox of the Will has been handed over to the learned counsel for the petitioner. The original Will has been handed over to the Government Advocate. The original Will shall be returned by the Sub-Registrar to the 6th respondent on production of this order copy.

13. The learned counsel for the sixth respondent submitted that the sixth respondent is not going to present the Will for registration again; however, the 6th respondent shall probate the Will. In case of probating the Will, it is open for the writ petitioner to raise the grounds of fraud, forgery and any other defence that is available to him, before the appropriate forum.

14. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

aeb / pvs

To

1. The District Registrar,
Chennai South, Jones Road,
Saidapet, Chennai 600 015.
2. The Sub-Registrar,
(In the cadre of District Registrar),
Anna Nagar, Chennai 600 040.

+1 CC to Mr.S. Bhargavan, Advocate sr 84796.
+1 CC to Mr.J. Doraisamy, Advocate sr 84830.
+1 Cc to Govt. Pleader sr 85414.

सत्यमेव जयते

W.P.No.18907 of 2013

KAN(CO)
SP(12/12/2017)

WEB COPY