



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.20 of 2014
and
M.P.(MD).No.1 of 2014

Edwin Pristly

... Appellant /Appellant/Plaintiff

Vs.

Chellathangam

... Respondent/Respondent/Defendant

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 11.07.2013, made in A.S.No.3 of 2013 on the file of the Sub-Court, Padmanabhapuram, confirming the judgment and decree, dated 21.09.2012, in O.S.No.58 of 2008 on the file of the Principal District Munsif cum Judicial Magistrate, Eraniel.

For petitioner

... Mr.K.P.Narayanakumar

For respondent

.... Mr.K.N.Thambi

JUDGMENT

The plaintiff, who had failed in both the Courts below, has preferred the above appeal. The suit was filed for recovery of possession and for consequential injunction.

2. The case of the plaintiff is that he is the owner of the plaint schedule property with the building thereon, having got the title and possession over the same, through a registered Will executed by his grandfather viz., Vaikuntam Nadar on 04.06.1996. The testator died on 12.07.1997. After his death, the Will had come into force and the plaintiff has got his title and claimed to be in possession of the property by regularly paying taxes. While so, the plaintiff was away from the property due to his employment. The defendant, who is the paternal aunt of the plaintiff, was permitted to clean the house and maintain the same. While the said arrangement was on, the defendant had locked the service courts thereby prevented the plaintiff from entering into the suit property. Thereafter, the plaintiff had to remove the same. The plaintiff requested the defendant to vacate the



premises and hand over the same to him which was refused by the defendant and hence, the suit.

3. The case of the defendant is that the said Vaikuntam Nadar, who is the father of the defendant, had no right to execute the document in favour of anybody as the property was joint family property. It is alleged by the defendant that the Will was drafted and registered by coercion and undue influence on the defendant's father, taking advantage of his age and infirmity. The other averments stated in the plaint are all denied by the defendant, as the testator had not stated any possible reason for disinheriting the other legal heirs.

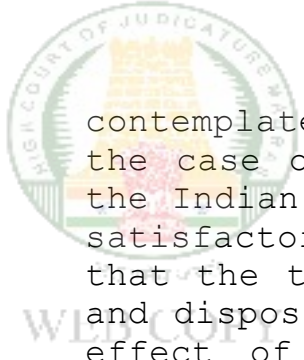
4. Before the trial Court, on the side of the plaintiff, P.Ws.1 to 3 have been examined and Exs.P.1 to P.5 have been marked, and on the side of the defendant, DW.1 has been examined and Exs.D.1 to D.5 have been marked. Both the Courts have concurrently held that the plaintiff is not entitled to the relief sought for in the suit.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the records carefully.

6. The only question that arises for consideration is whether the Will propounded by the plaintiff is proved in the manner known to law?

7. The Will, dated 04.06.1996, executed by the grandfather of the plaintiff, is a registered one and marked as Ex.A1. Thereafter, the testator died on 12.07.1997. The relationship between the parties are not disputed. In proof of Will, the plaintiff had examined PW2 and PW3, who are the attestors, besides examined himself as PW1. PW2 is the husband of the plaintiff's paternal aunt. He has deposed in the chief examination that the signature found in Ex.A1 was his signature and stated that PW3 also signed as a witness. The further reading of the evidence of PW2 states that he had been in Registrar Office along with his father-in-law viz., testator, only for the purpose of executing a mortgage deed. The father of the plaintiff wanted to execute a mortgage deed in favour of the plaintiff as he had spend more than Rs.10,000/- for the marriage of his sister. He has also stated that he had affixed his signature along with his father-in-law even without reading the papers. Except the above statement, nothing has been elicited from the evidence of PW2.

8. In a proof of Will, Section 68 of the Indian Evidence Act prescribes the procedure for proof of the execution of a document required by law to be attested. A Will comes into operation only on the death of the testator. When the propounder brings the Will before the Court, the Executor viz., testator is not available to speak about the nature of the document whether it is a mortgage deed or Will, the Court has to satisfy itself the procedure



contemplated under Section 68 of the Indian Evidence Act, as in the case of any other proof of documents. As per Section 63 of the Indian Succession Act, the propounder is duty bound to show by satisfactory evidence that the Will was signed by the testator and that the testator, at the relevant point of time, was in a sound and disposing state of mind and that he understood the nature and effect of disposition and put his signature in the document. Ordinarily, when the evidence adduced in support of the execution of the Will is disinterested, satisfactory or sufficient to prove the sound and disposing state of mind as required by law, the same may be accepted. But, in this regard, the learned counsel for the appellant claimed that though PW2 has stated that he and the testator did not have knowledge about the contents of the documents, he had signed in the document along with his father-in-law, ie., testator. In support of his contention, he has also placed his reliance on the judgment reported 2011 (1) CTC 694 (Gopi Vs. H.David and others), wherein at paragraph No.29, a learned Single Judge of this Court has held as follows:

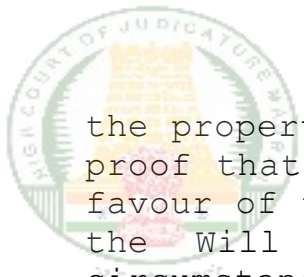
"29.Further, as held in the judgment reported in Madhavakrishnan v. Sami, 1989 (2) MLJ 398, when a person of full age signs a document, he cannot be heard to say that he was not permitted to read the document and he was not aware of the contents of the document. It has been held therein as follows:

"The general rule of law is that a party of full age and understanding is normally bound by his signature to a document whether he reads it or understands it or not. Equity does not save people from the consequences of their own fully but will save them from being victimised by other people.

... ..

Whenever a person of full age and understanding puts his signature to a legal document without taking the trouble of reading it or without asking the document to be read and explained to him but signs it relying on the word of another as to its character, contract or effect, he cannot be heard to say that it is not his document."

9. The above proposition may not be relevant to the facts of the present case. PW2, who is one of the attesting witnesses, has specifically stated that he was taken to the Registrar Office by his father-in-law only for the purpose of executing a mortgage deed. He has further deposed that the reason for executing the mortgage deed in favour of the plaintiff was that he had spent money for his sister's marriage for which the father wanted to reimburse him. If that is to be taken as true, then the intention of the testator would be not to execute the Will but to mortgage



the property in favour of the plaintiff. Therefore, the burden of proof that the testator only intended to bequeath the property in favour of the plaintiff, is more on the plaintiff, especially when the Will was alleged to have been executed in suspicious circumstances.

10. Interestingly, the plaintiff has also examined PW3, who is yet another attesting witness of Ex.A1. The said PW3 has totally denied the signature found on the Will and also denied that there was no such execution of document. He has gone on to depose further that the signature found on the document is not his signature, as he does not know Tamil and he used to sign only in English. Therefore, the evidence of PW3 cannot be counted for the purpose of proving the Will. PW2, who is another witness, has not spoken about the mental health of the testator and he has also not categorically stated that he has seen the testator putting his signature first and thereafter, he attested the same. The Courts below had rightly come to the conclusion that the evidence of PWs.2 and 3 are not useful for the purpose of proving the Will. As the onus of proving the Will is on the propounder, the plaintiff has miserably failed in doing so.

11. When the defendant had raised the plea alleging undue influence and coercion, the propounder had to satisfy the execution of the Will to the conscience of the Court. As I have stated earlier, the intention of the testator seems to be only to return the money spent by the plaintiff and not to make a bequest in his favour. The plaintiff has also not satisfactorily explained as to why the testator had disinherited the other legal heirs. The testator, who had thought of even reimbursing the extra expenditure incurred for the sister's marriage, would not have thought of disinheriting the other legal heirs. Therefore, the plaintiff has failed to establish the execution of the Will based on which the suit claim is made.

12. In the above circumstances, there is no merit in the second appeal. The second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Padmanabhapuram.

2.The Principal District Munsif cum Judicial Magistrate, Eraniel.

Copy to :- The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.K.P.Narayanakumar, Advocate, SR.No.65017

+One cc to Mr.K.N.Thambi, Advocate, SR.No.64761