

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2018

Coram

The Honourable Mr.Justice M.M.SUNDRESH
and

The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal No.362 of 2017
& CMP.No.22765 of 2017

Janabai Bakthavatchalam
W/o Bakthavatchalam,
No.16/189, Palani Andavar Koil Street,
Ayanavaram, Chennai-600 023.

... Appellant/Defendant

Vs.

M.Shankar Rao
S/o Late N.Mohan Rao,
Old No.23, New No.26, Chelliamman Nagar,
Velacherry, Chennai-600 042.

... Respondent/ Plaintiff

Original Side Appeal is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 27.03.2017 made in T.O.S.No.31 of 2011.

For Appellant : Mr.R.Manickavel

For Respondent : Mr.K.Magesh

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the daughter of the deceased late Pattammal. The respondent is the grandson through the pre-deceased son of late Pattammal. The appellant was working as a Nurse in the Port Trust Hospital, Chennai, for some time and abroad. On 19.05.1998, the late Pattammal executed a registered Will in favour of the respondent. She died thereafter only on 06.12.2007, viz., nearly after nine years. Seeking to probate

the Will, the respondent approached this Court by filing a petition in O.P.No.678 of 2009. In view of the objection raised by the appellant, as the Will did not make any reference to her, original petition was accordingly converted into T.O.S.No.31 of 2011. The learned single Judge framed the following issues.

(i) "Whether the Will dated 19.05.1998 extended by N.Pattammal in 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?"

2. The respondent examined the attester as witness apart from himself. P.W.2 is one of the attestors of the Will, though not present during the time of registration. Certain documents evidencing collection of rent were also marked.

3. The appellant inter alia contended that there is suspicious circumstance surrounding the execution since there was no reference of her name made by the deceased in the Will. There was also no mention about the reason for excluding her name. The Will has been forged and fabricated. There is no material to hold that the deceased executed the Will in a sound and disposing state of mind. The attesting witnesses are not independent witnesses.

4. The learned single Judge, after considering the entire materials available on record, was pleased to decree the testamentary original suit by granting letters of administration. A factual finding has been given by taking note of the factum of existence of the deceased after execution of Ex.P5. The fact that the respondent was receiving the rent for the property was also taken into consideration. The evidence of P.W.2 being an independent witness was duly considered. The learned single Judge found that Ex.P5, which is the registered document, was duly executed in a sound and disposing state of mind. There was nothing wrong in the evidence of P.W.2, who is the attesting witness, who have seen the deceased signing in the presence of the other attesting witness. Accordingly, the learned single Judge has granted the letters of administration.

5. The learned counsel for the appellant would submit that there was no whisper about the name of the appellant. The appellant is the daughter of the deceased is not in dispute. There is also no reason assigned in Ex.P5 for excluding her name. Therefore, the aforesaid factum creates suspicion on the

circumstances under which Ex.P5 is executed. Though Ex.P5 is registered, the same by itself cannot be a ground to uphold its validity. P.W2 is the tutored witness and therefore, the learned single Judge has committed an error in accepting the deposition.

6. The learned counsel for the respondent would submit that the fact that the deceased was living for nearly nine years after the execution of the Will coupled with the subsequent events that took place including the receipt of the rent by the respondent are sufficient enough to dispel a suspicion if any. The learned single Judge rightly took into consideration the further fact that the father of the respondent viz., pre-deceased son of the deceased died earlier and therefore, the deceased thought it fit to bequeath the property in favour of the grandson. Therefore, no interference is required.

7. Law is quite settled on the construction of the Will. A testamentary Court is not a Court of suspicion. After all, what is to be seen is the intention of the testator. Admittedly. In the case on hand, the deceased was living for nine years after execution of Ex.P5. The fact remains, her son pre-deceased her and the respondent being the grandson was living with his widow mother. Therefore, the grandmother rightly executed the Will in favour of the respondent. The appellant was gainfully employed elsewhere. She was not living with her mother. She was also living abroad some time. To uphold the validity of the Will, registration is one of the factors to be taken into consideration. P.W.2 has deposed in clear terms that the deceased Pattammal was in sound and disposing state of mind at the time of execution of the Will. She also deposed that the testatrix has signed in Ex.P4 in her presence and in the presence of the other attesting witnesses. Therefore, the parameters required under Section 68 of the Indian Evidence Act, 1872, have been duly satisfied. The mere non mentioning of the name of the appellant by itself cannot be a ground to create suspicion. The learned single Judge took into consideration of the relevant material in upholding the Will. We also find that execution has been duly proved and so is the case of the attestation made. Thus, no ground is made out and the original side appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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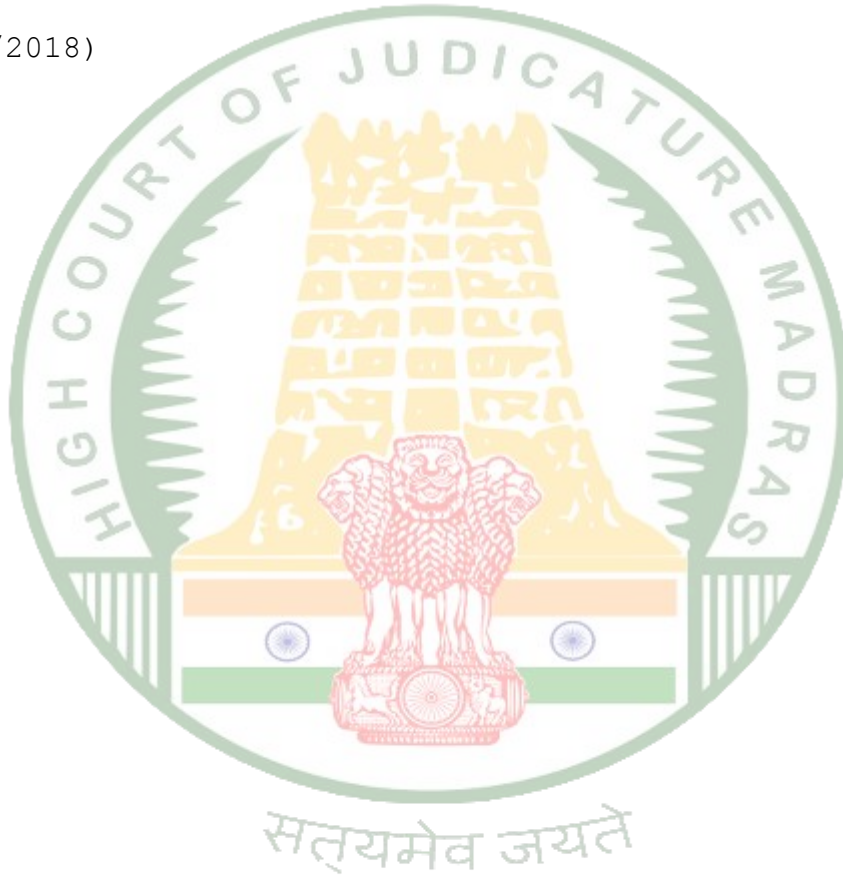
1.The Sub Assistant Registrar,
High Court,
Madras.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.36526

+1cc to Mr.K.Magesh, Advocate, S.R.No.36152

O.S.A.No.362 of 2017

GJ(CO)
GSP(02/07/2018)



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