

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
25-07-2018	14-08-2018

Coram:

The Hon'ble Mr. **Justice N.SATHISH KUMAR****Testamentary Original Suit No.3 of 2015**

[O.P.No.592 of 2013]

A.P. Maikandan ... Plaintiff

Versus

P.K.Vallikumar ... Defendant

Petition filed for the grant of Letters of Administration with will annexed of property and credits of deceased may be granted to the plaintiff as son of deceased under Section 232 and 276 of the Indian Succession Act 1925, read with Order XXV Rule 5 of the Original Side Rules of Madras High Court, 1956.

For Plaintiff

..

Mr. V. Manohar

For Defendant

..

Mr.AR.L.Sundaresan
Senior Counsel for
Mr.R.Shanmugam

JUDGMENT

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The Original Petition has been originally filed for grant of Letters of Administration based on the Will dated 29.10.1987 executed by one Mr.A.M.Paramasivanandam, thereafter, converted as a suit in view of the contest

by the defendant.

2. The brief facts leading to the filing of this suit are as follows:

2.(a) The father of the Plaintiff, one Mr.A.M.Paramasivanandam died on 15.08.2001 leaving behind the registered Will dated 29.10.1987 bequeathing the suit property to the plaintiff. As the petitioner was preoccupied, there was a delay in filing of the Letters of Administration. The 1st respondent in the O.P. was not opposed the Will. The 2nd respondent contested the Will and filed written statement. Hence, the O.P. was converted as Testamentary Original Suit and the 2nd respondent in the O.P. has become defendant in T.O.S.

3. It is the contention of the defendant that the deceased had more immovable properties. The deceased owns only three immovable properties is denied. The plaintiff and defendant are born to the deceased through his second wife. It is also denied about the execution of the Will dated 29.10.1987. It is the further contention of the defendant, soon after the death of their father the plaintiff has got a legal heir certificate stating that he was the only legal heir, suppressing the other legal heirs. It is also the contention of the defendant that his father was running an educational institution and the property was allotted by

the then Chief Minister of Tamil Nadu for the purpose of educational institutions. Therefore, she doubts the authenticity of the Will and its execution. It is the further contention of the defendant that the deceased father had purchased many other properties also. Hence the Will is disputed.

4. In the reply statement it is stated by the plaintiff, that the Will is a handwritten Will. The deceased lived 14 years after the Will. The various other properties mentioned in the written statement is no way connected with the Will. It is the contention of the plaintiff that the Will was executed while the testator was in sound state of mind.

5. Based on the above pleadings, the following issues were framed:

1. Whether the plaintiff is entitled to Letters of Administration as prayed for?
2. Whether the Will dated 29.10.1987 is true and genuine?
3. To what other reliefs the parties are entitled to?

6. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.P.1 to P.8 marked. On the side of the defendants, defendant was examined as D.W.1 and Exs.D.1 to D.14 were marked.

7. The learned counsel appearing for the plaintiff submitted that

admittedly, the father of the plaintiff who is independent man, having status in life, was running several educational institutions and he himself written the Will in his own hand writing and registered the Will on 29.10.1987 bequeathing the schedule property to the plaintiff, his only son. The testator himself gave a reason for not bequeathing the property to the daughters as they were given properties separately. The Will has been registered and the testator died after 14 years. They never questioned the Will all these years. P.W.2 is one of the attesting witnesses. He was closely associated with the testator for many years, till his death and stated that at the time of the executing the Will, testator was in good conscious, in sound and disposing state of mind with hale and healthy. D.W.1 has challenged the Will in entirety. However, different stand has been taken in the cross examination that P.W.2 is not the original attesting witness, which is also found to be false. Hence, it is the contention of the learned counsel that from the evidence of the defendant it is clear that there were several panchayats held in the family, which was the reason for delay in approaching the Court. Mere delay in approaching the court cannot be a ground to disbelieve the registered Will and it is proved in the manner known to law.

8. Learned Senior Counsel Mr.AR.L.Sundaresan argued vehemently that the Will is shrouded with serious suspicion. First suspicion is with regard to the delay in filing of O.P. Though the consent of the attesting witnesses was

obtained in the year 2011, O.P. was filed in the year 2013. Further the plaintiff has applied for legal heir certificate suppressing the other legal heir names. This itself clearly shows that the Will is shrouded with serious doubt. Even in the reply statement, the allegations in the written statement has not been denied entirely. It is the further contention of the learned senior counsel that the evidence of D.W.1 clearly indicates that all the children of the testator were treated equally and the D.W.1 after the death of her husband, was taken care of by her father and her children education also taken care of by the father. All the children were treated equally. That being so, there was no reason as to why the daughters alone were excluded in the Will. These facts coupled with delay in coming to the Court for Letters of Administration itself clearly indicate that the plaintiff himself was not sure about the genuinity of the Will. Hence, the plaintiff has not discharged the burden of suspicious circumstances shrouded in the Will.

9. It is the further contention of the learned senior counsel that the testator is well mannered, educated and looking after so many properties individually. He is closely moved with the political leaders. The man of such stature writing the will in the presence of watchman and driver is also highly doubtful. P.W.2 is not an original attesting witness. His name is Krishnappan. But the attesting witness signed in the Will as Krishnappa and the documents

filed by the defendant show that the several addresses have been changed. All these facts will show that the Will is suspicious. Hence, submitted that the suit has to be dismissed.

10. In the light of the above submissions we have to discuss the issues one by one.

11. The relationship between the parties are not in dispute. The plaintiff is the only son of Mr.A.M.Paramasivanandham who died on 15.08.2001. Respondents 1 and 2 in O.P.No.592 of 2013 are daughters of the said Mr.A.M.Paramasivanandham also not in dispute. Similarly, 1st respondent in O.P.has not objected the Will. Only the 2nd defendant another sister of the plaintiff objected the Will. The Will is of the year 1987. The Will has been marked as Ex.P.6. The Will is holographic Will written in the handwriting of the testator and registered before the Sub-Registrar, Anna Nagar on 29.10.1987 and the same was attested by one Mr. Krishnappan and one Mr.Padmanaban.

12. The entire written statement except doubting the signature in the Will, the writings and handwriting of the testator was not specifically denied by the defendant. Of course mere non-denial of the Will will not amount to proof of the Will. The fact remains that when the registered Will of the own father was

propounded, the daughter who is well acquainted with the signatures has taken a different stand in the written statement, except stating that there is doubt about the signature and authenticity of the Will. But the writing said to have been made by her father is not denied. P.W.2 is one of the attesting witnesses was examined. In his evidence he has deposed that he has close association with Mr.A.M.Paramasivanandham till his life time. His evidence goes to show that after completing the Will the attester has put his signature in the presence of himself and another attesting witness Padmanaban. They were present with the testator when he executed the Will in respect of the property owned by him at Ayyavoo Street, Shenoy Nagar, Chennai. It is the specific evidence of P.W.2 that the Will was executed by Mr.A.M.Paramasivanandam while he was in sound state of mind. Even in the chief examination he has asserted that both the attesting witnesses have seen the testator signing the Will and the testator also seen the attesting witnesses signing in the Will. The only defence taken by the defendant in the cross examination of P.W.2 is that he has not signed in the Will as attesting witness as the signature in the Will has appeared as Krishnappa and P.W.2 name is Krishnappan.

13. The evidence of P.W.2 with regard to the attestation and signing of the document has not been denied in the cross examination. But the defendant questioned the identity of the attesting witness itself. The other attesting

witnesses was a driver under Mr.A.M.Paramasivanandham. P.W.2's evidence in entirety is not assailed in the cross examination except attacking his identity. In this regard to prove his identity his voters' ID and ration card were also filed. Though there are two different addresses given in ration card and Voters ID card, the evidence of P.W.2 examined in this regard clearly shows that the address have been given in the Electoral list based on the change of address given to the concerned authority from time to time. At any event it is the evidence of D.W.2 that though the addresses are changed in the identity card, the person is one and the same viz., Krishnappan. The court while recording the evidence of P.W.2 also verified the ID card and allowed him to be examined as P.W.2 . Therefore, merely because the person while signing as attesting witness has not written his full name viz., Krishnappan cannot be said that he is a different person, from the person who had attested the Will. Except the letter 'n' he has signed as Krishnappa. Though the letter 'n' was not written, the manner in which the signature was put indicates that the sign is only as the original signature. Therefore, merely because there is some difference in a letter at the end of the signature, it cannot be said that the signature is no way connected to the attested witness.

14. Admittedly, P.W.2 was working under the deceased as watchman.

This fact is not in dispute. He has cited as one of the attesting witnesses. It is

also relevant to note that in the written statement also the defendant has clearly admitted that one of the attesting witness is none other than the watchman of the testator. These facts clearly indicate that in fact D.W.1 was aware of the fact that the watchman was the real attestor. His entire evidence with regard to the attestation and execution of the will was not assailed in the cross examination. It is curious to note that D.W.1's evidence when carefully analysed, makes it clear and strengthen the contention of the plaintiff the Will was left by the deceased. The deceased was not an ordinary layman. He has education back ground. Her evidence clearly shows that the respondents 1 & 2 were given property by their father at the time of their marriage. It is also the evidence of D.W.1 that her father had a good contact with politicians, poets and other important persons in all walks of life. He constituted a Trust also and his father used to take his own decision in dealing with his properties. After taking his own decision he cannot be influenced by any other persons in changing his decisions. From the evidence of D.W.1 it is clear that the Testator is an independent man, he cannot be influenced by anyone. He used to take decisions of his own in respect of his own properties. Therefore, when testator was such character not being influenced by any one on his taking decisions, merely he sought the help of his own servants viz., watchman and driver to be the attesting witnesses, mere signing documents by his own servants cannot be at no stretch of imagination invalidate the document. In fact when the person

was of such a character, he would have taken a conscious decision to write the Will with the help of his servants. Will was written in his own handwriting and also got registered. Every official act shall be presumed to have done legally. Therefore, it is for the defendant to show that the will was not at all written by her father.

15. One more contention of the learned Senior Counsel is that the Will does not contain the thumb impression of the testator. It is to be noted that when the plaintiff is able to prove the execution and attestation of the Will, then the burden shifts on to the other side to show that the father did not even sign and put thumb impression in the book maintained in the Registrar Office. The defendant ought to have called for the thumb impression register and could have verified the same with the aid of the expert. But she has not done so. All these facts clearly show that the defendant only for the sake of contest, has put forward her defence. The above inference is also fortified by her own admission in her evidence. She has categorically admitted that she has not in terms with her own sister viz., 1st defendant. Further she has also admitted that the school started by her father is now in her daughter's control. All connected documents with regard to the said properties is also in the hands of her daughter. She is keeping the records relating to College. Further admission of the DW1 is that the properties mentioned in the written statement are not referred in the Will Ex.P.6.

She has not filed any suit for the properties mentioned in the written statement since the properties are existing and she has got her own right in the said properties. She is entitled to file suit in respect of other properties. She has objected to grant Letters of Administration for the reason that all the properties are not included in the Will. It is the further evidence of DW1 that her daughter alone is pursuing this case since she is not well her daughter is supporting her and this case is being defended by her because of her children's influence particularly her daughter. These facts clearly indicate that the defendant for the sake of defending the case, has contested the suit.

16. It is the main contention of the learned Senior Counsel that the plaintiff has obtained Legal Heir Certificate in his own name, which was objected by the defendant and written a letter to the Corporation. In this regard Ex.D.10 when carefully perused the letter addressed by the defendant clearly indicate that she was aware of the Will left by her father in the year 1987. In her evidence also D.W.1 admitted that she only gave instructions to her daughter to state the contents in the application to Corporation. This fact clearly indicates that in the earlier point of time itself she was aware of the fact that the Will was attested by watchman. All these facts clearly show that for the sake of defending the suit, the defendant contested the case.

17. It is to be noted that Ex.P.6 Will was written by his father in his own handwriting giving reason for excluding daughters. It is seen that at the time of marriage the deceased gave separate big houses, jewels and others to D.W.1 and another daughter. Now they are all settled. These facts clearly show the mind of testator to provide the property to the son. Therefore, mere exclusion of the defendant Will cannot be doubted. Similarly the other sister of D.W.1 has not objected Will. The Will was executed in the year 1987 and the deceased died in the year 2001 i.e., after 14 years. This fact is not in dispute. It is the categorical admission of the defendant that there were panchayats in the family and her father executed several other unregistered Wills. The above Wills though not attested by the witnesses her father wrote 7 wills. All the Wills were destroyed by the plaintiff. Even after the registration of the Will, their father lived for more than 4 years. If really such Wills have been executed later by the father and destroyed by the son which is also known to everyone in the family, the testator being such an educated man would not have kept quiet till his death, he would have cancelled this Will also. The evidence of P.W.1 is very clear that in the year 1987 his father was hale and healthy, he had no health problem. In the cross examination D.W.1 has stated that at the time of her marriage her father has given house property to her as well as to her sister as stated in the Will. Before the Will, her father has not given any property to her

brother/plaintiff. She has not come across any of the document bequeathing any property in favour of her brother by their late father. These facts clearly shows that the reasons assigned in the Will by the testator appears to be genuine one.

18. It is the further evidence of D.W.1 that she is contesting this suit since because her brother had filed the suit and there is no other reason. she has contested the suit and she has claimed right in the other properties. Her evidence also clearly show that the father has written Trust Deed that all of his legal heirs would become the trustees of the Trust. D.W.1 also become the trustee in the year 1971. In the year 1988 she was removed from the Trust as if she was resigned. She has not taken any steps for removal of her name from the Trust. All these facts clearly indicate that the defendant has challenged the Will due to personal dispute. The Will is registered one. P.W.2 is the watchman of the school run by the deceased and the testator at the time of writing the Will in the year 1987 was hale and healthy. As per her evidence he used to take his own decision and he cannot be influenced from any other. Having written the Will in his own handwriting, merely because he has not sought any help of others that alone cannot be a ground to disbelieve the Will. Hence, this Court is of the View that the plaintiff has proved the Will in the manner known to law. There is no suspicious circumstances attached to the Will. Mere delay in approaching the Court cannot be a ground to suspect the Will. The plaintiff has

pleaded that since he was preoccupied, there was a delay.

19. In this regard it is useful to refer the Judgment in ***Corra Vedachalam Chetty v. G. Janakiraman, 2001 (3) CTC 283***, wherein a Division Bench of this Court had considered the aspect of failure to produce Will for probate immediately after the demise of testator and its effect, wherein it is held as follows:

"The fact that the Will was not produced immediately after the demise of the testator for the purpose of probate, does not by itself render the Will fraudulent or untrue. So also the fact that the Will came from the custody of the daughter, beneficiary does not render the Will untrue when the evidence exists to show that the Will was in fact, the last Will of the testator."

20. Similarly reference was made to a decision of the Bombay High Court's case in ***Vasudev Daulatram Sadarangani v Sajni Prem Lalwani (AIR 1983 Bom.268)***. Para 16 reads as follows:

"16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--

(a) under the **Limitation Act** no period is advisedly prescribed within which an application for probate, letters of administration or succession

certificate must be made;

(b) the assumption that under [Article 137](#) the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) **such delay must be explained, but cannot be equated with the absolute bar of limitation; and**

(g) once execution and attestation are proved, suspicion of delay no longer operates".

21. By applying the above dictum in the case on hand, it is crystal clear

that, the execution and attestation of the Will dated 29.10.1987 is proved through the evidence of P.W.1 and P.W.2 and no suspicious circumstances are seen throughout the Will. The defendant has not disproved the same by valid oral and documentary evidence. The plaintiff's plea for delay, that he was preoccupied has also been accepted by this Court is not a ground to suspect the said Will.

22. D.W.1 stated in her evidence that in the year 1997 or 1998 her father had written documents six times gifting in her favour allegedly destroyed by the plaintiff. The father lived for another four years from that time. However, the defendant has not taken any steps in this regard. This fact clearly shows that her defence has not been substantiated. Further in the cross examination the defendant has admitted that the plaintiff used to talk to her with regard to compromise. But compromise was not arrived. All these facts coupled with the fact that another sister has given consent affidavit to grant letters of administration to the plaintiff proved the execution of the Will in the manner known to law. Hence, the plaintiff is certainly entitled for Letters of Administration.

23. Though the defendant pleaded that certain properties other than the Will properties, no materials have been placed to show that those properties

were available except holding certain trust were created. No evidence was adduced with regard to the other properties. Therefore, this Court is of the view that the evidence for availability of other properties is not at all necessary in this suit. It is for the parties to work out their remedies, if there are other properties are available.

24. In the result

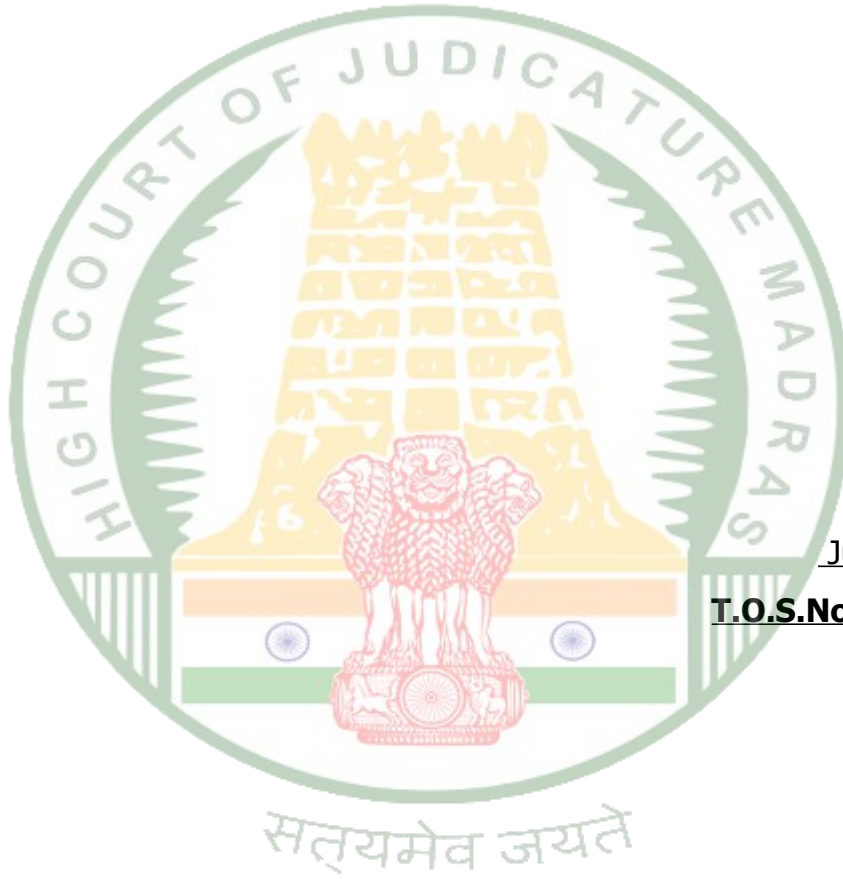
1. The suit in TOS No.3 of 2015 is decreed.
2. The letters of Administration, having the effect limited the State of Tamil Nadu, shall be issued in favour of the Plaintiff in respect of the property bequeathed to him in the Will dated 29.10.1987.
3. The Plaintiff shall execute a Security Bond for a sum of Rs.25,000/- in favour of the Assistant Registrar (O.S-II), High Court, Madras.
4. The Plaintiff is directed to render true and correct accounts once in a year.
5. Considering the relationship between the parties, there shall be no order as to costs.

14-08-2018

Index:Yes/No
Internet:Yes/No

N. SATHISH KUMAR, J.

ggs.



Judgment in:

T.O.S.No.3 of 2015

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