

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.12.2017

PRONOUNCED ON: 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.73 of 2013

Pratap K Moturi

Plaintiff

Vs

1. M.Krishna Mohan (deceased)
2. Lalitha Mothan
3. Anuradah Moturi

Defendants

Prayer:- This Testamentary Original Suit is filed under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration with the Will annexed.

For Plaintiff : Mr.C.P.Sivamohan

For Defendants : Mr.Rajakalifulla, SC for
Mr.T.K.Viswanath

JUDGEMENT

This Testamentary and Original Suit revolves around the last Will and Testament of S.Moturi Satyanarayana, who died on 6.3.1995 at Chennai, and who, according to the Plaintiff, had executed a Will dated 20.05.1983.

2. The Plaintiff, Pratap K.Moturi, who is the son of S.Moturi Satyanarayana had filed OP.No.761 of 2004, seeking Letters of Administration

with the Will annexed. In OP.No.761 of 2004, the Respondents were Krishna Mohan, another son of S.Moturi Satyanarayana, Ravi Moturi, who is another son of K.Moturi Satyanarayana, and Jyothsana Parachuri, Usha B.Rao, Kasturi Balaraman and Sujatha Premukar, who were daughters of S.Moturi Satyanarayana. Notice had been directed in OP.No.761 of 2004 and the 1st Respondent, Krishna Mohan alone had challenged the grant of Letters of Administration and consequently, OP.No.761 of 2004 had been converted into TOS.No.73 of 2013. The 1st Respondent, Krishna Mohan was shown as the sole Defendant. Pending TOS.No.73 of 2013, Krishna Mohan died and his legal representatives, Lalitha Mohan, his wife and Anuradah Moturi, his daughter, were brought on record. They were shown as the 2nd and 3rd Defendants. They had filed a written statement and contested the TOS.No.73 of 2013.

3. In the amended plaint in TOS.No.73 of 2013, the Plaintiff, Pratap K.Moturi has stated that his father S.Moturi Satyanarayana, who died on 6.3.1995 at Chennai, had left behind a Will executed on 20.5.1983 and the Will was actually deposited with the Registrar. After his death, the sealed cover containing the Will was opened, on an application, in the presence of the Petitioner, and the 3rd Respondent in the OP, Jyothsana Parachuri.

4. According to the Plaintiff, the deceased Testator had left behind two properties. One was three storeyed building at No.7, 1st Crescent Road, Adyar, Chennai-20 and the other was vacant land, measuring 4 acres, at No.92, Poonamallee High Road, Numbal Villagae, Poonamallee. He had impleaded all the kith and kin of S.Moturi Satyanarayana in OP.No.761 of 2004. He,

therefore, claimed that Letters of Administration with the Will must be granted to him.

5. As stated above, the 1st Respondent, Krishna Mohan alone challenged the grant of Letters of Administration and after his death, his legal representatives, who had been impleaded as the 2nd and 3rd Defendants, had filed their written statement.

6. In the written statement, it has been stated that S.Moturi Satyanarayana was very fond of M.Krishna Mohan, who was his first son and that S.Moturi Satyanarayana did not leave behind any Will. He had never mentioned about the execution of any Will. It was only when notice was received from the Court that M.Krishna Mohan came to know about existence of a Will. It has been further stated that the Plaintiff, acting as Principal of his son Nikil K.Moturi, had sold, by way of sale deeds, registered as Document Nos.10151 of 2008, 101152 of 2008 and 10153 of 2008, all dated 29.10.2008, in the Office of the Sub Registrar, Kundrathur, the property at Numbal Village and in the sale deeds, had stated that the properties were not the subject matter of any encumbrance and that no case is pending. They did not reveal about the pendency of OP.No.761 of 2004. They had particularly stated that the property is not subject matter of any Will.

7. It has been further stated in the written statement that as a matter of fact, in another sale deed in Document No.10154 of 2008, the other brother Ravi Moturi had sold the property at Poonamallee through his Agent, Pratap K.Moturi and that they had claimed that they have good title, whereas under the Will, the property had devolved on to the grand children alone. It has been

further stated that attestation was said to have been done at No.7, I Crescent Street, Gandhi Nagar, Adyar, Chennai-20. However, the address of the attestor, P.K.Reddy was given as 'Kakapalek Post, Nellore District, Andhra Pradesh'. It has been stated that the attestation is also forged. It has been further stated that the signature of S.Moturi Satyanarayana was different in each page of the Will. The Testator was aged about 81 years in the year 1983 and his health and mental conditions were also not good. There was no reason to disinherit his first son, M.Krishna Mohan.

8. It has been further stated in the written statement that S.Moturi Satyanarayana was a Member of Parliament in the Rajya Sabha for a period of 16 years from 1950 to 1966. With respect to the property at Adyar, it was stated that there was a joint patta in the names of the seven legal heirs of the Testator. It has been stated that the valuation given for both the properties were very low. It has been stated that since there were suspicious circumstances surrounding the execution of the Will, the suit must be dismissed.

9. The Plaintiff had also filed a reply statement. He denied the averment that S.Moturi Satyanarayana was very fond of his eldest son, M.Krishna Mohan. The fact that the Will was executed was reiterated. It was further stated that the Will was deposited in the custody of the District Registrar, Madras South, by S.Moturi Satyanarayana himself in the presence of two identifying witnesses.

10. It has been further stated in the reply statement with respect to the sale deeds that he had subsequently cancelled the sale deeds and the cancellation deeds had been registered as Document Nos.11765 to 11768 of

2010, in the office of the Sub Registrar, Kundrathur. It has been stated that the Will was executed at the residence of S.Moturi Satyanarayana in the presence of two attesting witnesses, P.Ravindra Kumar Reddy and J.Raghavendra Rao and thereafter, it was kept in a sealed cover and it was deposited in the Office of the District Registrar, Madras South in the presence of Y.Anjajeyalu and the Plaintiff on the same day. The Testator had not revoked the Will subsequently. He had not modified the Will and he had not executed any codicil. After his death on 6.3.1995, the Will was opened by the District Registrar on 17.7.1995 in the presence of P.Ravindra Kumar Reddy and the 3rd Respondent, Jyothsana Parachuri. This was duly recorded by the District Registrar. The Will was copied and a copy of the Will was filed in Book III, as Document No.31 of 1995 on 19.7.1995. It has been stated that at the time of execution of the Will on 20.5.1983, one of the attesting witnesses, P.Ravindra Kumar Reddy was having his residence at Nellore District. In the year 1995, he was residing at Adyar, Chennai. It was reiterated that the Will was a genuine Will. It was claimed that Letters of Administration must be granted.

11. Based on the pleadings, this court had framed the following issues for trial on 22.04.2016:-

1. Whether the Will dated 20.05.1983, executed by late S.Moturi Satyanaranaya is genuine, valid and not surrounded by suspicious circumstances?
2. Whether the Testator, viz. S.Moturi Satyanarayana had executed another Will dated 04.03.1995 and if so, whether it is valid, genuine and not surrounded by suspicious circumstances?

3. To what other reliefs the Plaintiff is entitled to?

12. The parties were invited to let in oral and documentary evidence. On the side of the Plaintiff, the Plaintiff, Pratap K.Moturi was examined as PW.1. One of the attesting witness to the Will, J.Raghavendra Rao was examined as PW.2. The other attesting witness, P.Ravindra Kumar Reddy was examined as PW.3. The Plaintiff had marked Ex.P1 to Ex.P13. Ex.P1 is the original Will dated 20.5.1983 and Ex.P2 is the cover, which contained the original Will when it was deposited with the District Registrar, Madras South. Ex.P3 is the original death certificate of S.Moturi Satyanarayana and Ex.P4 is the legal heirship certificate of S.Moturi Satyanarayana. Ex.P7 is the letter, dated 6.6.1991 said to have been written by the 1st Defendant. Ex.P8 is the copy of the sale deed in Document No.295 of 1977 in the name of the 1st Defendant. Ex.P9 is the letter said to have been written by S.Moturi Satyanarayana, dated 15.5.1991. Ex.P10 is the settlement deed, executed by the 1st Defendant in favour of the 2nd Defendant and registered as Document No. 416 of 2002. Ex.P11, Ex.P12 and Ex.P13 are copies of cancellation of settlement deeds.

13. On the side of the Defendants, Ex.D1 to Ex.D11 were marked. Ex.D1 is the copy of joint patta issued in favour of the legal heirs. Ex.D2 to Ex.D5 are the copies of sale deeds executed by the Plaintiff as Power of Attorney Agent and Ex.D6 is the copy of Writ Petition in WP.No.19407 of 2013. Ex.D7 dated 4.3.1995 is the Will said to have been executed by the Testator in favour of the 1st Defendant. Ex.D8 to Ex.D11 had been marked by consent

during the arguments and they are copies of judgement and decree in OS.No.768 of 2005 and AS.No.4 of 2008.

14. The Defendants had filed applications to examine further witnesses, particularly, the attesting witnesses to Ex.D7 and in this regard, an Advocate Commissioner had been appointed and his report had also been filed into the Court.

15. This Court heard Mr.C.P.Sivamohan, the learned counsel for the Petitioner and Mr.Rajakalifulla, SC for Mr.T.K.Viswanath, the learned counsel for the Defendants.

16. **Issue (1):-** The father of the Plaintiff, S.Moturi Satyanarayana was a person of much repute, who left behind two properties, namely, one at Gandhi Nagar, Adyar, Chennai and another at Numbal Village, Poonamallee, Chennai. S.Moturi Satyanarayana was said to have executed a Will dated 20.5.1993. A perusal reveals the following:-

(a) It had been signed by him in each and every page. He had very clearly mentioned in the Will his age that he was aged 80 years and that he was quite hale and healthy. He had also stated that he thought that it was advisable to make provisions and arrangements. He had further stated that his wife Surya Kantha Devi, was aged about 73 years. He had also mentioned about his three sons, Krishna Mohan, Ravindra and Pratap Kumar and also the given names of four daughters, Jyothsana, Usha, Kasthuri and Sujatha. He had also mentioned the names of their husbands. He had further mentioned that all the four daughters are married and are well placed in life. He had, therefore, stated that there was no necessity to make any provision in the Will.

These facts reveal personal details and it is only natural that the Testator should mention about all his family members. This gives credence to lead a hypothesis regarding a favourable opinion about the genuineness of the Will.

17. In the Will, Ex.P1, the Testator had further stated that the properties, which he possessed, were his self acquired and absolute properties. He had further specifically stated that all the "three sons", which term he had later struck off and written as 'children', have no right whatsoever and that he alone has got absolute power of disposal. He had further bequeathed to his wife the movables, cash, shares and also mentioned the names of the shares. He had also mentioned about the immovables in his possession, namely, three storeyed building at Door No.7, I Crescent Road, Gandhi Nagar, Chennai-20 and a vacant land, measuring 4 acres at No.92, Poonamallee High road, Numbal Village, Chennai. He claimed that both the properties were his self acquired properties. Thereafter, he had stated that he bequeathed to his second son Ravindra and his third son, Pratap Kumar, the first and second floors and the ground floor of the said house respectively and that the site behind the house will go to the occupants of the first floor with the usual passage for ingress and egress. Again, it must be mentioned that the details to the knowledge of the Testator had been given.

18. The Testator had further stated in the Will that after his life time, his grand daughter, Anuradah, who is the 3rd Defendant, herein will be entitled to one acre and his grand sons, Srinivas, son of Ravindra and Nikil Kumar, son of Pratap Kumar, who is the Plaintiff, shall be each entitled to 1.5 acres in the land at Numbal, Poonamallee High Road. He had also reserved his right to

cancel or revoke the Will. This Will was attested by two witnesses namely, P.Ravindra Kumar Reddy and J.Raghavendra Rao, who were examined in Court as PW.2 and PW.3 respectively.

19. The Will Ex.P1, was deposited in a sealed cover. The said sealed cover was marked as Ex.P2. It was deposited by means of the said sealed cover in the Office of Registrar, Joint I, South Madras. In the sealed cover, the Testator had put his signature. The sealed cover was also signed by two witnesses, Y.Anjajeyalu and the Plaintiff herein. After the death of S.Moturi Satyanarayana, the sealed cover was forwarded to the Registrar (OS), High Court, Madras, by the Registrar, Joint I, South Madras, by letter dated 9.2.2004. The sealed cover was actually opened by the Registrar, Madras South, in the presence of PW.3, P.Ravindra Kumar Reddy and the 3rd Respondent in the OP, Jyothsana Parachuri, who is one of the daughters of S.Moturi Satyanarayana. The Will was subsequently copied and a copy was filed in Book III, as No.31 of 1995,V-27, Pages 39-40. This was on 19.7.1995. The said endorsements are found in Ex.P1.

20. The death certificate of S.Moturi Satyanarayana was marked as Ex.P3. It is seen that he died on 6.3.1995. As stated above, PW.1, the Plaintiff, during his examination, had marked Ex.P1 to Ex.P5, which are mentioned above. He was also cross examined on behalf of the Defendants. During his cross examination, he stated that "My elder brother's daughter Anuradah (3rd Defendant) is eligible to one acre". This was in respect of the property at Poonamallee. He further stated that "I filed OP on 20.10.1997, presented on 28.11.1997. It was numbered on 2004 in the year". He had further stated that

three of his sisters had given no objection. He denied that consent affidavits have not been filed into the Court.

21. Ex.D1 was marked during his cross examination. This is the joint patta in the name of all the legal heirs. During his examination, he marked Ex.P2, Ex.P3, Ex.P4 and Ex.P5, which are certified copies of sale deeds in Document Nos.10151 to 10154 of 2008. He also admitted to the fact that in the recital in the said documents, it was mentioned that the property was not the subject matter of any Will, gift, endowment. He also stated that as per the Will, Ravindra Moturi is not the owner of the property at Poonamallee. The Writ Petition filed in WP.No.19407 of 2013 was also marked as Ex.P6 during his examination. He specifically stated that he accompanied S.Moturi Satyanarayana to the Registrar's Office for depositing the Will. He denied that the signatures of the Testator contained different strokes in the Will. He denied that the Will was a forged document.

22. The witness was also recalled for cross examination. Thereafter, one of the attesting witnesses, J.Raghavendra Rao had been examined as PW.2. He also filed his proof affidavit. He also very clearly stated that the Testator S.Moturi Satyanarayana had affixed his signature in all the pages. He further stated that the Testator signed his signature in his presence and also in the presence of the first attesting witness. He further stated that the health and mental conditions of the Testator were perfect. During his cross examination, he stated that his father was a friend to the Testator and also knew him well. He was present during the execution of the Will at the residence of the Testator. He did not go to the Office of the Registrar, to deposit the Will. He

further stated that the Plaintiff was his junior in the School and that the other attesting witness was also a school mate.

23. It must be kept in mind that the Will was executed in 1983 and the witnesses were cross examined in 2016. Consequently, it must also be kept in mind that minor details as to whether the witness took leave on a particular date, whether the said date was a working day or a holiday and whether he attended the office, are too minute details and would not normally be of recollection to anybody after a period of thirty years. The witness had also very honestly stated that he did not know the direction in which the Testator was facing on the date of execution. With respect to the actual attestation, he stated during cross examination that "when I was signing in Ex.P1 Will himself, the Testator, the first attesting witness, P.Ravindra Kumar Reddy and Pratap were present, but Pratap was not in the table.' He further stated that "I did not find any difference in the signature of the Testator found in page 3, except a stroke between two signatures." He denied the suggestion that the signatures of the Testator were different. He denied that he, PW.1 and the 2nd attesting witness forged the Will. It is thus seen that on the material aspect of attestation, the witness had withstood cross examination.

24. The other attesting witness was examined as PW.3. He also filed his proof affidavit. He further stated that after execution of the Will, S.Moturi Satyanarayana had stated that he had deposited the cover containing the Will in the District Registrar's Office. The witness further stated that after the death of the Testator, acting under the request of the Plaintiff, he had accompanied his sister, Jyothsana Parachuri to the District Registrar Office at

Saidapet. He specifically stated that the sealed cover containing the Will was opened by the District Registrar on 17.7.1995 in the presence of Jyothsana Parachuri and himself and it was also signed by the District Registrar.

25. In this connection, it must be mentioned that the original will had actually been forwarded by the Registrar, Joint I, to the Registrar (OS), High Court, Madras. In his letter dated 9.2.2004, the Registrar, Joint I, had stated that in obedience to the summons issued, he was enclosing the original of the Will, the original Register as No.31 of 1995 of Book III and the original sealed cover itself. With respect to the opening of the sealed cover, there is an endorsement in the original will "having satisfied myself that the Testator himself is dead, the sealed cover containing this Will is opened on the application and in the presence of Pratap K.Moturi." This was identified by P.Ravindra Kumar Reddy, PW.3, on 17.7.1995 and signed by the District Registrar. There is a further endorsement that the Will had been copied and the copy was filed in Book III as No.31 of 1995 in Volume 27, Paged 39-40.

26. During his chief examination, PW.3 has also stated that the signature found in each page of Ex.P1 is that of S.Moturi Satyanarayana. During his cross examination, he reiterated the fact that the Will was signed by S.Moturi Satyanarayana and that he had attested the Will.

27. One of the contentions of the Defendants was that the Plaintiff had executed four sale deeds with respect to the property at Poonamallee and had stated that the property was not the subject matter of any Will. However, the learned counsel for the Plaintiff has subsequently explained the circumstances that the sale deeds had been prepared mechanically with the

usual covenants. He stated that the four sale deeds had been subsequently cancelled. The cancellation deeds have also been produced and marked as Ex.P11 to Ex.P14. I hold that nothing much can be interpreted over this, since the Plaintiff had cancelled the sale deeds.

28. The learned senior counsel for the Defendants pointed out Sections 40, 42, 43 and 45 of the Registration Act and Rules 10, 69, 98 and 108 of the Registration Rules, which are as under:-

“Section 40:- Persons entitled to present wills and authorities to adopt. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub Registrar for registration.

(2) The donor, or after his death donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub Registrar for registration.

Section 42:- Deposit of wills. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.”

Section 43:- Procedure on deposit of wills. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his register book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover, the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

Section 45:- Proceedings on death of depositor: (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the Testator is dead, he shall, in the Applicant's presence, open the cover, and at the Applicant's expense, cause the contents thereof to be copied into his Book NO.3.

(2) When such copy has been made, the Registrar shall re-deposit the original Will."

Rule 10:- (i) The registers shall be in the Forms shown in Appendix I.

(ii) Where necessary more than one volume of the same class may, with the previous sanction of the Registrar, be used simultaneously for the registration of documents.

Rule 69:- When a will or an authority to adopt is presented for registration after the death of the Testator or the donor, the registering officer shall fix a day for the enquiry contemplated by section 41(2) of the Act and shall cause notice of the enquiry (a) to be served on the persons to whom in his opinion special notice should be given, (b) to be posted in a conspicuous part of the registration office and (c) to be published (i) in the Gazette of the district in which the Testator or donor lived, (ii) in the Gazette of the District in which the property of the deceased is situated, and (iii) in the villages where the Testator or donor lived, where interested parties may reside and where the property of the deceased is situated. The cost of the service of the notice and of its publication shall be levied in advance from the person who presents the document for registration."

Rule 98:- (i) A receipt shall be granted for each document presented for registration, for each power of attorney presented for authentication and for each sealed cover deposited and for every fee or fine levied by a registering officer.

(ii) An application for transfer of revenue registry presented with a document shall be acknowledged in the receipt for the document.

(iii) When the fees consist of several items, each item shall be separately entered both in the receipt and in the counterfoil so as to admit of any over charge being traced. In the case of copying fees, the number of words shall be entered and in the

case of mileage, the number of miles.

Rule 103:- In order to obtain delivery of a document, the person entitled to claim back the same shall produce the receipt and the registering officer shall thereupon obtain his signature to the acknowledgment in the counterfoil and return both the document and the receipt after endorsing on the latter the date of its return and initialling this entry. A person entitled to claim back a document who is known to the registering officer may obtain the return of a document by sending the receipt to the registering officer through a messenger with a requisition endorsed on the receipt and signed by himself for the delivery of the document to the messenger. The document may, then, be handed over to the messenger after his acknowledgement and thumb impression have been taken in the counterfoil of the receipt, the receipt being retained in the office and pasted to the counterfoil."

29. The learned senior counsel for the Defendants stated that the procedure adopted in the present case was not proper.

30. In the present case, the Will was executed at the residence of the Testator at Adyar. Thereafter, the Testator had gone to the Office of the Registrar, Joint I, Saidapet, South Madras and had deposited the Will. The cover containing the deposit of the Will had been produced into the Court. It is Ex.P2. The original Will was marked as Ex.P1. Both the attesting witnesses in Ex.P1 had been examined as PW.2 and PW.3. They had affirmed their signatures in Ex.P1. The fact that they are friends of the Plaintiff will not discredit them from acting as witnesses to the will. It is only natural that the Testator, who was aged 80 years, would choose someone, who are of young age and would be in a position to depose as attesting witness in a court of law,

31. In the present case, the wisdom of the Testator is evident since the Will was executed in the year 1983 and PW.2 and PW.3 were examined in the year 2017 after 33 years. After execution of the Will, which has been

attested by PW.2 and PW.3, the Testator had gone to the Office of the Registrar as stated above. He had also taken a witness with him, namely, Y.Anjajeyalu. He had put his signature in the sealed cover and handed it over to the Registrar. After his death, the sealed cover was opened in the presence of PW.3 and the 3rd Respondent, Jyothsana Parachuri, who is one of the daughters of the Testator. There is an endorsement by the Registrar to the effect that he satisfied himself regarding the death of the Testator and thereafter, opened the sealed cover. There is yet another endorsement that the Will was copied in accordance with the rules and copied as Document No.31 of 1995. The Joint Registrar, by a letter to the Registrar (OS), Madras High Court, had forwarded the original Will and also the original sealed cover. Consequently, the rules and procedures stipulated under the Registration Act have been strictly complied with.

32. In this connection, presumption under Section 111(e) of the Indian Evidence Act can be drawn. There is a presumption that every judicial and official act had been correctly done. Section 114 (e) of the Indian Evidence Act is as follows:-

“114. Court may presume existence of certain facts. The court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.

(e) That judicial and official acts have been regularly performed.”

Office, Madras South. It is also seen that PW.3 had let in evidence not only about the attesting of the Will, but also the opening of the sealed cover in the Registrar Office.

33. The other aspect which has been raised is the aspect of unequal distribution of properties. I hold that the very purpose of a Will is to ensure that normal course of inheritance is deviated. The wishes of the Testator are expressed in the form of the Will. I find no infirmity on the aspect of bequeath. The Testator had expressed his wishes.

34. The other aspect is the execution of the sale deeds. I do not read much into it. It is a fact that whenever any deed is prepared, clauses are always mechanically inserted that the property is not the subject matter of any encumbrance. The said sale deeds had been cancelled by the Plaintiff to show his bona fide.

35. With respect to the Will, Ex.P1, it is the contention of the learned senior counsel for the Defendants that Book No.5 in the Registrar Office had not been produced. The propounder has to prove the Will and remove the suspicious circumstances. In the present case, the Plaintiff has removed the suspicious circumstances by proving the execution of the Will by establishing the attestation of the Will and by proving the presence of the attestors. The further fact that it was deposited in the Registrar's Office is also proved because the original Will and the sealed cover were forwarded only by the Registrar's Office to the Court.

36. The fact that Book No.5 was not produced is a very weak theory to stand on. The 2nd Defendant also had the opportunity of summoning the

said document from the office of the Sub Registrar. It was also stated that there was no witness to prove the deposit of the Will and opening of the sealed cover. To prove the deposit of the will, PW.1 had been examined and to prove the opening of the sealed cover, PW.3 had been examined.

37. With respect to the signature of the Testator, if there had been doubt, either one of the two parties could have forwarded the document for forensic examination. Neither party took such a step. I hold that the allegation that the Will is fabricated and forged is a statement made only for the sake of stating the same.

38. Section 63 of the Indian Succession Act is as follows:-

“63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

39. Section 68 of the Indian Evidence Act is as follows:-

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been

called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

40. In 2002 1 CTC 244 (Madhukar D.Shende Vs. Tarabai Aba Shedage) in paragraph 8, the Honourable Supreme Court had held as follows:-

“8.The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and way layers.

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict — positive or negative.”

41. In 2005 1 CTC 443 SC (Sridevi and others Jayaraja Shetty and

others) it was held in paragraph 14 as follows:-

“14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW 2, the scribe, in his testimony has categorically stated that the Will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW 2) and the two attesting witnesses (DWs 3 and 4) is fully corroborated by the statement of the handwriting expert (DW 5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed.”

42. Consequently, I hold that the Will, Ex.P1 had been properly executed and properly attested and properly proved. Accordingly, issue (1) is answered in favour of the Plaintiff.

43. **Issue (2):-** The Defendants have produced a Will, marked as Ex.D7, dated 4.3.1995. It is unregistered. It is dated two days before the death of the Testator. There are two attesting witnesses. Assistance of this Court was sought to examine the said attesting witnesses. The propounder of the Will has to produce the witnesses. DW.1 is the 2nd Defendant and she had filed the

applications. The Court granted permission. Subsequently, it was found that one of the attesting witnesses was dead and the other attesting witnesses could not be traced. This Court, thereafter, came to the further assistance of the 2nd Defendant by appointing an Advocate Commissioner. Unfortunately, the Advocate Commissioner, who went in search of the address of the said witness, could not locate the address and in fact, found the address itself was wrong. The Advocate Commissioner had also made enquiries with the neighbours. He was informed that the attesting witness was not available. Consequently, I hold that Ex.D7 Will dated 4.3.1995 has not been proved by the propounder, DW.1, the 2nd Defendant in a manner known to law. Accordingly, issue (2) is answered against the Defendants.

44. For all these reasons, I hold that the Will, Ex.P1 has been proved in accordance with law. Consequently, with respect to issue (1), I hold that the Will, Ex.P1, dated 20.05.1983 executed by the Testator, S.Moturi Satyanarayana, is true and genuine and I hold the Issue (1) in favour of the Plaintiff. With respect to issue (2), I hold that Ex.D7 has not been proved by the 2nd Defendant, in a manner known to law and accordingly, I hold the issue (2) against the Defendants. With respect to issue (3), I hold that the Plaintiff is entitled to grant of Letters of Administration with the Will annexed.

C.V.KARTHIKEYAN, J.

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45. In the result, this TOS is decreed as prayed. Issue Letters of Administration in favour of the Plaintiff. The Plaintiff is directed to duly

administer the properties and credits of the deceased more fully described in the schedule. The Plaintiff is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The Plaintiff is further directed to render true and correct accounts once in a year.

30.01.2018

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
TOS.No.73 of 2013



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