

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 31.01.2018

JUDGMENT PRONOUNCED ON : 19.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

T.O.S.No.42 of 2004

1.Kalavathy (Deceased)

2.C.N.Anbalagan,

3.L.Anuradha,

4.A.Sakunthala

... Plaintiffs

(No.11/5, Beemasena Garden Street,
Mylapore, Chennai-600 004)

(Plaintiffs 2 to 4 brought on record 1st plaintiff (deceased)
as per order dated 05.01.2016 in A.No.5281/15 in
T.O.S.No.42/2004)

Vs.

M.R.Sivasankaran

... Defendant

O.P.No.203 of 2004 converted as T.O.S.No.42 of 2004 filed under
Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the
grant of Letters of Administration.

For Plaintiffs : Mr.V.Manohar

For Defendant : Mr.K.Chandrasekaran

J U D G M E N T

The 1st plaintiff Kalavathy (deceased) originally filed O.P.No.203 of 2004 seeking an order to grant Letters of Administration with respect to the last Will and testamentary of T.Saravana Perumal, who had died on 16.10.2002, at Chennai.

2.According to the petitioner, T.Saravana Perumal had owned immovable property at Mylapore, Chennai. He had executed a Will on 11.12.1997. When he died, he did not leave behind any issues, his wife and parents pre-deceased him. The petitioner claimed to be the legatee under the Will, claiming that the Will had been executed in the presence of independent witnesses, who had also attested the same, this petition had been filed.

3.As stated above, Kalavathy died during the pendency of the proceedings and her legal representatives; C.N.Anbalagan, L.Anuradha, and A.Sakunthala were brought on record. The grant of Letters of Administration was challenged by M.R.Sivasankaran, on application, the original petition was converted as T.O.S.No.42 of 2004. In the written

statement filed by M.R.Sivasankaran, he stated that he is the son of paternal uncle of original son Mrs.Rajheswari, who was the w/o.T.Saravana Perumal. According to him, the Will has to be proved in the manner known to law.

4.He further stated that the Will had directed performance of two Charities. One religious Charity from the rental income, and no part of the income was given to Kalavathy, and even the property was dedicated wholly to the Charity. It has been stated that Kalavathy is the first trustee, and she has to nominate a successor trustee. It had been stated that her legal representatives again continued the proceedings.

On the above pleadings the following issues were framed :

1.Whether the Will dated 01.12.1997 is true, valid and genuine?

2.Whether the probate proceedings are maintainable after the death of the first trustee, namely, the first plaintiff?

3.To what other reliefs, the plaintiff is entitled to?

5.The parties were invited to let in oral and documentary evidence. Accordingly, on the side of the plaintiffs, the 2nd plaintiff C.N.Anbalagan was examined as PW-1, one of the attesting witnesses D.Loganathan was examined as PW-2, and N.Ramesh, the son of the other attesting witness C.S.Neelakantan was examined as PW-3. The defendant did not examine any witnesses.

6.The plaintiffs marked Exs.P-1 to P-6. Ex.P-1 is the original Will dated 11.12.1997. Ex.P-2 , P-3 and P-4 are the death certificates of T.Saravana Perumal and Kalavathy, and legal heirship Certificate of late Kalavathy. Ex.P-5 and P-6 are the signatures of C.S.Neelakantan found in the Will and identified in Court.

7.Heard arguments advanced by Mr.V.Manohar, learned counsel for the plaintiffs and Mr.K.Chandrasekaran, learned counsel for the defendant.

8.Mr.V.Manohar, learned counsel for the plaintiffs in the course of his arguments pointed out that the original Will had been produced in Court, and that it had been proved in manner known to law by examining the

attesting witnesses. He further stated that the stipulations set out in the Will can be executed only after letters of administration had been granted by the Court.

9. On the other hand, Mr.K.Chandrasekaran, learned counsel for the defendant stated that the Kalavathy was not bequeathed with any property or income. According to him, the properties were bequeathed for charitable purposes, and there was an obligation to perform the charities and they have not been done. The learned counsel therefore, stated that the suit must be dismissed.

10. I have carefully considered the arguments advance by both the learned counsels.

Issue No.1:

11.Ex.P-1 is the original Will dated 11.12.1997, executed by T.Saravana Perumal and the Will is in English. The testator described himself as T.S.Iyyer alias T.Saravana Perumal and he was aged 83 years. He claimed to be the owner of the house property bearing Door No.5, Beemasena Garden Street, Mylapore, Chennai 600 004. He had inherited

the property from his wife S.Visalakshi Ammal alias S.Rajeswari Ammal, who had died on 14.09.1980. They had no issues. He further stated that after his wife died, Anbalagan, S/o.C.S.Neelakantan, his wife Kalavathy and their two daughters were living with him. He further stated that they are affectionate towards him, and have been helpful in his old age. They have been looking after him for the past seventeen years. Consequently, he had executed the Will bequeathing of his property to Kalavathy, w/o.Anbalagan. He further stated that she must give a gold thali weighting about four grams to a proper and fit person in the community every year and school uniform worth Rs.1,000/- for deserving students of Sabapathy Chettiar Elementary School and perform abishekam to the deity "Arulmigu Veerabathirar" Kumbakonam, to an extent of Rs.500/-, and also carry out beneficial activities. He also stated that she shall appoint a fit person to carry out the works after her life time. This Will had been attested by C.S.Neelakantan, S/o.Subramania Iyer, and D.Loganathan, S/o.B.Devaraj. D.Loganathan, was examined as PW-2. In the course of his cross examination, he very clearly stated that he affixed his signature, along with the other attesting witnesses, in the presence of the testator and the testator signed the Will at the same time.

12. During his cross examination, he denied the suggestion that T.Saravana Perumal did not execute the Will. He affirmed he was healthy and in conscious state of mind. He denied that the Will was fabricated. He denied that he had given false evidence. The son of C.S.Neelakantan the other attesting witness, by name N.Ramesh was examined as PW-3. He identified the signatures of his father in the Will as stated above. The Will had been marked as Ex.P-1, and P-5 and P-6 are the signatures of C.S.Neelakantan identified by PW-3.

13. The only ground taken by the defendant is that the Will stipulates charitable activities to be carried out. However as contended by Mr.V.Manohar, learned counsel for the plaintiffs such activities can be continued only after the court grants letters of administration. The defendant also did not tender oral the evidence and did not come forward to submit himself for cross examination. The evidence of PW-2 more than clearly establish that the Will had been executed in the manner prescribed by law.

Sections 63 of Indian Succession Act is extracted 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 been 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."

Section 68, Indian Evidence Act, 1872, 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 not 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."

14. In the present case, the Will had been proved in the prescribed manner. The attesting witnesses have been examined and consequently, I find no infirmity in the execution of the Will and accordingly this issue is answered in favour of the plaintiffs.

Issue No.2:-

15. The present proceedings had been initiated by Kalavathy, who is a beneficiary/legatee under the Will and she had died pending proceedings. The death certificate had been filed as Ex.P-3 and her legal heirship certificate had been filed as Ex.P-4. Thereafter, this Court had permitted the legal representatives to continue with the proceedings by an order dated 05.01.2016 in A.No.5281 of 2015. The right reserved on Kalavathy flowed on her legal heirs and consequently in their capacity as legal heirs, plaintiffs 2 to 4 had been impleaded as parties. The contention of the learned counsel for the defendant that the right to continue the proceedings, does not enure to the present plaintiffs, cannot be accepted, since grant of the Letters of Administration of the Will alone is being decided and if the same is granted, the plaintiffs will be under obligation to render accounts and also state that they have performed their obligations

under the Will. Consequently, I hold that the proceedings are maintainable even after the death of the 1st plaintiff. As a matter of fact, the 1st plaintiff cannot be termed as a trustee. She had been bequeathed with the property and had been given obligations to perform. She died and her right accrues to the other plaintiffs. Accordingly, this issue is also answered in favour of the plaintiffs.

Issue No.3 :-

16. In the result, I hold that the testamentary and original suit has to be decreed and that the plaintiffs are entitled to Letters of Administration with respect to the Will dated 11.12.1997, executed by T.Saravana Perumal, who died on 16.10.2002. The suit is decreed, however in the circumstances without costs.

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19.02.2018

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List of the Witnesses examined on the side of the Plaintiffs:

PW1 - C.N.Anbalagan

PW2 - D.Loganathan

PW3 - C.N.Ramesh

List of Exhibits marked on the side of the Plaintiffs:

1	Ex.P1	Original Will executed by late T. Saravanaperumal.	11/12/1997
2	Ex.P2	Death certificate of Saravanaperumal.	12/11/2003
3	Ex.P3	Death certificate of Kalavathy.	10/11/2012
4	Ex.P4	Legal heirship certificate of late Kalavathy.	08/11/2012
5	Ex.P5 & Ex.P-6	Identified signatures of late C.S.Neelakandan father of late Saravanaperumal in the Will.	---

19.02.2018

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Index : yes/ No

Internet : Yes/No

Speaking order/ Non-speaking order

To

The Sub Assistant Registrar,

Original Side,

High Court, Madras.

C.V.KARTHIKEYAN,.J.



Pre-Delivery Judgment
in
T.O.S.No.42 of 2004

19.02.2018

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PRE-DELIVERY ORDER IN

T.O.S.No.42 of 2004

THE HONOURABLE MR.JUSTIC C.V.KARTHIKEYAN
Respectfully Submitted.

K.P - P.A.



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