

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.06.2019	Delivered on 11.07.2019
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

T.O.S. No.11 of 2015

P.R. Padmanaban Plaintiff

Vs.

1. Govindammal

2. P.R.Loganathan

3. R.Lakshmi

4. P.R.Ethirajulu

5. R.Rajeswari

.... Defendants

Prayer : Complaint filed under Order XXV Rule (5) of the Original Side Rules and Section 232 and 276 of Indian Succession Act, to pray that letters of administration with the Will annexed may be granted to the plaintiff is the legatee under the Will of the deceased.

For Plaintiff

: Mr.A.Arumugam

For Defendants

: Mr.P.Kamarasu

J U D G M E N T

The petitioner, who is one of the sons of Late Ragaviah, who died on 12.06.1992, had filed OP No.935 of 2006, seeking Letters of Administration in respect of a Registered Will dated 03.04.1992, said to have been executed by the deceased Late Ragaviah. The wife, two sons and two daughters of Late Ragaviah have been cited as respondents in the Original Petition.

2. Upon service of notice, the respondents 1, 4 and 5 namely, the wife and the daughters filed a caveat opposing the grant, while the sons remained *ex parte*. Since a caveat was filed, the Original Petition was converted into a Testamentary Original Suit and numbered as above. Upon conversion the defendants have filed their written statement denying execution of the Will.

3. According to the Caveators, namely, defendants 1 to 3, the Will is a forged and fabricated instrument. It is claimed that the plaintiff took the said Ragaviah from Kilpauk General Hospital under the pretext of taking scan and in collusion with his brother-in-law V.Sampath, who also

figures as the attesting witness to the Will, an employee of the KMC Hospital, took the testator to the Registrar's Office and obtained the Will. It is the further claim of the defendants that the testator was not in sound disposing state of mind at the time of execution of the Will.

4. The fact that there was a quarrel between the plaintiff and his brothers, even during the year 1997. The police complaints that were lodged leading to the filing of a Bail Application by the plaintiff, was also cited as circumstance which would have a bearing on the genuineness of the Will. The first defendant also claimed that to her knowledge the deceased Ragaviah, had not executed the Will in favour of the plaintiff.

5. Upon the above pleadings, the following issues were framed by this Court for determination in the Testamentary Original Suit.

1. Whether the Will dated 03.04.1992 is true and genuine?

2. Whether the plaintiff is entitled to order for letters of administration?

3. Whether the suit is barred by limitation?

4. Whether the defendants have got any right over the property demised under the Will?

5. To what other reliefs, the plaintiff is entitled?

6. At trial, the plaintiff has been examined himself as P.W.1. He had examined one Ramamurthi, one of the attesting witnesses to the Will, as P.W.2. The first and third defendants have been examined as D.W.1 and D.W.2 respectively. Exhibits P1 to P4 were marked on the side of the plaintiff and Ex.D1 was marked on the side of the defendants during cross-examination of P.W.1.

7. I have heard Mr.A.Arumugam, learned counsel appearing for the plaintiff and Mr.P.Kamarasu, learned counsel appearing for the defendants.

Issue No.1 and 2:

8. These two issues are taken up together for disposal, since they are interconnected. Mr.A.Arumugam, learned counsel appearing for the plaintiff would contend that the evidence of P.Ws. 1 and 2, coupled with the fact that the Will is a registered instrument would show that the Will is true and genuine and the so called suspicious circumstances claimed by the defendants do not exist.

9. The plaintiff has filed a proof affidavit reiterating the averments made in the petition. He has produced the Original Will as Ex.P2 and the Original Death Certificate of deceased Ragaviah as Ex.P1, the Legal Heirship Certificate of the deceased Ragaviah as Ex.P3. The affidavit of the attesting witness namely, K.Ramamurthy (P.W.2) has been marked as Ex.P4.

10. Mr.A.Arumugam, learned counsel appearing for the plaintiff would draw my attention to the cross-examination of P.W.2, wherein, P.W.2 has deposed as follows:

“Raghaviah came to my house and invited me personally to attest the Will. He came alone to my house. He told me that he is going to prepare the Will and he has asked me to come in the afternoon to sign in it. It would be around 6.30 a.m. when he came to my house on the date of execution of the Will.”

The witness also added

“On the day I attended my duty at K.M.C. Hospital after getting two hours permission, I went to Sub Registrar office.”

11. Relying upon the aforesaid evidence, the learned counsel for the plaintiff would submit that the plaintiff has proved the execution of the Will by the testator and its attestation by K.Ramamurthy. Mr.A.Arumugam, learned counsel would also further contend that the Will being a registered instrument presumption under Section 60(2) of the Registration Act would arise. He would also point out that there is no evidence, contra, which would dislodge the statutory presumptions that arise in view of Section 60(2) of the Registration Act, read with under Section 114 of the Evidence Act.

12. As regards the suspicious circumstances that are raised by the defendants, the learned counsel would point out that the Will is only in respect of a portion of the property and the remaining property is available to the other heirs of the testator. Therefore, according to him, there is nothing on record to doubt the genuineness or validity of the Will.

13. Contending contra Mr.P.Kamarasu, learned counsel appearing for the defendants would submit that the defendants have specifically pleaded that the deceased was unwell and was taking treatment in KMC Hospital. He would also rely upon the Ex.D1, the notice

to produce, wherein he had called upon the plaintiff to produce the documents relating to the treatment undertaken by the deceased at KMC Hospital.

14. The learned counsel would lay considerable stress on the fact that the said notice to produce has not been replied to by the plaintiff and hence an adverse inference should be drawn against the plaintiff for non-production of the medical records. He would also rely upon the evidence of P.W.1, wherein P.W.1 has admitted that he has got the medical records with him. The learned counsel appearing for the defendants would also point out that P.W.2 is closely known to the family members of the testator and he is related to P.W.1. He would also rely upon the judgment of the Hon'ble Supreme Court in **Ramdas Oil Mills v. Union of India**, reported in **1977 (1) SCC 592**, wherein the Hon'ble Supreme Court had held that if a person does not produce accounts books which are in possession, adverse inference can be drawn against him for non-production of the documents.

15. Reliance is also placed by the learned counsel on the judgment of the learned Single Judge of this Court in **Govindarasami Naidu v. Shanmuga Nattar and another**, reported in **2007 (2) CTC 553**,

to buttress his submission regarding drawing of adverse inference for non production of admitted documents. Another judgment of the learned Single Judge of this Court in **Commissioner, Hindu Religious and Charitable Endowments, Administration Department, Madras v. A.Krishna Iyer**, reported in **2019 (1) MWN (Civil) 588**, it also relied upon to invite me to draw an adverse inference against the plaintiff for non-production of Medical Records of the deceased Ragaviah.

16. The learned counsel would also submit that there are several suspicious circumstances surrounding the execution of the Will. The first among such suspicious circumstances is non-mentioning of the existence of the first defendant in the Will. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Kalyan Singh v. Chhoti and Others**, reported in **1990 (1) SCC 266**, to contend that disinheritance of the wife by itself is a suspicious circumstance.

17. The learned counsel would also draw my attention to the judgment of the Hon'ble Supreme Court in **Janki Narayan Bhoir v. Narayan Namdeo Kadam**, reported in **2003 (1) CTC 308**, to contend that the Will has not been duly proved, inasmuch as, the plaintiff has not examined any other witness to prove the execution of the Will. The learned

counsel would draw my attention to paragraph 10 of the judgment of the Hon'ble Supreme Court in **Janki Narayan Bhoir**, which reads as follows:

“10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested 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 an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence.”

18. The learned counsel would also further contend that the examination of the Sub Registrar before whom the Will was presented for Registration is fatal to the case of the plaintiff, in support of the said submission, the learned counsel would rely upon the Hon'ble Supreme

Court in **Joseph Antony Lazarus (dead) by L.Rs. v. A.J.Francis**, reported in **2006 (2) CTC 756**.

19. The learned counsel would also draw my attention to the judgment of the Division Bench of this Court in **Josephine Jerome v. S.Santiago and another** reported in **2007 (4) CTC 672**, to contend that the evidence of P.Ws. 1 and 2 is wholly insufficient to prove the execution of the Will. According to him, the said evidence does not show that the Will was read over to the testator and explained to him, before he affixed his signature in the Will. The learned counsel would submit that P.W.1 was not present at the time of execution of the Will and P.W.2 had deposed that the Will was prepared and kept ready, when he went to the Registrar's Office. Pointing out that P.W.2 has deposed that he saw the testator signing the Will and the other attesting witness attesting the Will. The learned counsel would submit that such evidence alone is not sufficient to prove the execution of the Will by the testator. In support of his submission, the learned counsel would rely upon the observations of the Hon'ble Supreme Court in paragraph 15 of the said judgment which reads as follows:

*“15. A perusal of the aforesaid decisions
makes it clear that something more is required to*

be proved than mere proof of signature of the testatrix. It is required to be proved that the hand was with the mind and that the testatrix put her signature intending to bequath the property in the manner indicated.”

20. The learned counsel would also rely upon the judgment of the learned Single Judge of the Karnataka High Court in **B.Rajegowda & another v. H.R.Shankaregowda & others**, reported in **AIR 2006 kar 48**, wherein, it was held that the Will cannot be said to have been proved, if the attesting witness had not seen the writing of the Will and also subscribing of the signature of the executor.

21. I have considered the rival submissions.

22. From the evidence on record, it is seen that P.W.1 has deposed that he was not present at the time when the will was executed. Therefore, his evidence may not be very relevant in deciding, as to whether, the execution of the Will has been established or not. As regards the evidence of P.W.2, a perusal of the cross-examination of P.W.2 demonstrates that P.W.2 was invited personally by the testator to attest the

Will. He had also deposed that he had seen the testator signing the Will and the other attesting witness attesting the Will.

23. An argument is now taken that P.W.2 is related to the petitioner. P.W.2 has very clearly stated that his daughter has been given in marriage to the plaintiff's Sister-in-law's son. He would also add that the said marriage took place in the year 1996. As already adverted to the Will was executed in 1992 itself and the testator Raghaviah died on 12.06.1992. It so happened that P.W.2 became related to the plaintiff subsequently. Therefore, the fact that P.W.2 is related to the plaintiff cannot discredit his evidence totally. A perusal of the Will shows that it has been scribed by an Advocate and the same has been presented for registration in the office of the jurisdictional Sub Registrar on the same day. The testator has admitted the execution of the Will before the Sub Registrar. Endorsements to that effect have been made by the Sub-Registrar, as required under Section 59 of the Registration Act in the said Will.

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24. Section 60(2) of the Registration Act provides that once the endorsements have been made in the Certificate of Registration, as prescribed under Section 59, such certificate is entitled to be presumed to

be correct and the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned. Therefore, once the document is presented for registration and its execution is admitted before the Registering Authority, the Certificate issued to the effect by the Registering Authority is entitled to a presumption of genuineness under Section 60(2) of the Registration Act. After all registration is an official act performed by the Registering Authority based on the powers conferred under the statute namely, the Registration Act. Therefore, the defendants cannot be heard to contend the evidence of P.Ws. 1 and 2 is insufficient to establish execution of the Will by the testator.

25. In fact the Division Bench of this court in **Josephine Jerome v. S.Santiago and another** reported in **2007 (4) CTC 7672**, had at paragraph 18 of the judgment observed as follows:

“18. It is well known that an attesting witness need not know the contents of the document and he merely attests the signature of the Executant. If any Will is prepared in the presence of attesting witnesses as per the instructions of the testatrix, obviously the attesting witnesses should be in a position to prove the execution of the Will.

However, in the present case, the attesting witnesses have stated that by the time they came, the document was already prepared and the testatrix merely signed the document in their presence. It was therefore necessary for the Propounder of the Will to prove that the Will had been executed by the testatrix after understanding the contents thereof. This could have been done by proving that the document had been prepared as per the instructions of the testatrix or that the testatrix herself gone through the document or that it had been read over and explained to her or even by other surrounding and circumstantial evidence like the testatrix acknowledging that the Will had been prepared according to her instructions or even by the fact that execution of the Will had been admitted before the statutory authority such as the Sub-Registrar."

26. As I had already pointed out the testator had admitted execution before the Sub-Registrar and such admission forms part of the

Certificate signed by the Sub-Registrar, under Section 59 of the Registration Act. When such evidence is available, I do not think that the claim of the defendants that the execution of the Will has not been established or that it has not been proved that the testator had knowledge of the contents of the Will at the time of its execution. As pointed out by the learned counsel, the existence of the wife of the testator has not been disclosed in the Will, though the Will refers to the existence of the children namely, the two sons and the two daughters and also the fact that the sons and daughter were married. But that alone in my considered opinion will not render the Will invalid.

27. The differentiating factor in the case on hand is that what has been bequeathed to the plaintiff is only a minor portion of the property and the testator had retained the remaining portion to be divided among the other heirs. Therefore, I am unable to accept the contention of the learned counsel that non-mention of the existence of the wife or not providing anything for her under the Will cannot be construed to be a suspicious circumstance affecting the Will of the testator.

28. The next argument of the learned counsel for the defendants is that adverse inference has to be drawn against the plaintiff for non

production of the medical records. No doubt, the Court is entitled to draw adverse inference against a person for non production of material evidence in his possession. A notice to produce has been given and the plaintiff has not responded to the said notice. In his evidence, he has also stated that he is in possession of the medical records of his father, but he has not chosen to produce the same. The evidence on record would show that the testator suffered a Heart Attack on 12.06.1992 in the morning at about 4.00 a.m. and he was taken to Kilpauk Medical College Hospital for treatment and he died in the Hospital on the same day. There is nothing to show that the testator was admitted in Kilpauk Medical Hospital on earlier occasions or that he had a medical history before he suffered a heart attack on 12.06.1992. In absence of such evidence, I am unable to accept the submission of the learned counsel that non-production of the medical records would lead to adverse inference being drawn against the plaintiff.

29. In fact D.W.1, the mother of the plaintiff, has deposed that the testator was living with her under her care and custody at the time of his death. She had deposed that she has not produced any medical record to show that her husband was admitted in K.M.C. Hospital on 03.04.1992 or on subsequent dates. This evidence, in my considered opinion dissuades me from drawing adverse inference against the plaintiff for non-production

of the medical records. Even in her proof affidavit, the D.W.1 had not stated that the testator had suffered any illness prior to 12.06.1992 and he was admitted in K.M.C. Hospital on 03.04.1992, when the Will came to be executed. I do not find any substance in the contention of the learned counsel for the defendants that the Court should draw an adverse inference against the plaintiff for non-production of the nonexistent medical records.

30. Reliance placed on the learned counsel for the plaintiff on the observations of the Hon'ble Supreme Court in ***Janki Narayan Bhoir v. Narayan Namdeo Kadam, reported in 2003 (1) CTC 308***, is, in my opinion, misconceived. On the facts of the said case, the Hon'ble Supreme Court observed that if attestation by one of the attesting witness is not proved as required under Section 68 of the Evidence Act, it is incumbent upon the propounder either examine the other attester or the Sub-Registrar or the scribe of the will to prove execution.

31. Once the evidence of one of the attesting witnesses is available and the said evidence is sufficient to prove the execution of the Will by the testator the question of calling upon other persons does not arise. The evidence of P.W.2 in my considered opinion is more than

sufficient to prove the execution of the Will by the testator and its attestation by the two attesting witnesses including P.W.2. P.W.2 has clearly and categorically deposed in his cross-examination that the testator signed in his presence and the attesting witnesses also signed in the presence of the testator. The fact that the Will is also a Registered Will would tilt the balance in favour of the plaintiff.

32. For the foregoing reasons, I find that the plaintiff has proved the execution and attestation of the Will and he is entitled to Letters of Administration a copy of the Will annexed. Hence Issue Nos.1 and 2 are answered in favour of the plaintiff.

Issue No.3

33. This issue relates to the question of limitation. A Division Bench of this Court in **S.Vatsala v. K.S.Mohan**, reported in **2016 (1) LW 577**, had held that there is no limitation for seeking issuance of Letters of Administration. All that the law requires is that, if the application is filed after three years from the date of the death of the testator, the plaintiff will have to give reasons, as to why, he has not filed an application within the period of three years. In paragraph 6 of the petition, the plaintiff has very clearly stated that in the second week of June 2005, when he was looking

into title deeds and other records pertaining to the property, he accidentally found the Will, which his father had left in his old bag. This claim of the plaintiff is not denied by the defendants.

34. In view of the same, I find that the plaintiff has shown sufficient reason for not filing the application for grant of Letters of Administration and Issue No.3 is also answered in favour of the plaintiff.

Issue No.4:

35. Since I have concluded that the plaintiff has proved the execution of the Will and he is entitled to Letters of Administration, it follows that the defendants will not get any right over the property bequeathed to the plaintiff under the Will.

Issue No.5:

36. In view of the answers to issues 1 to 4, I find that the plaintiff is entitled of relief of grant of Letters of Administration with Will annexed in favour of the plaintiff. The Testamentary Original Suit is therefore decreed as prayed for granting Letters of Administration with a Will annexed. Plaintiff shall execute a bond for a sum of Rs.10,000/-. Considering the relationship between the parties, there will be no orders as to costs.

11.07.2019

jv

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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

- | | |
|----------|----------------|
| 1. P.W.1 | P.R.Padmanaban |
| 2. P.W.2 | K.Ramamoorthy |

List of Exhibits marked on the side of the Plaintiff :

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	Original Death Certificate of N.Ragaviah	----
2	Ex.P2	Original Will registered as Doc.No.65/1992 at SRO, Anna Nagar	03.04.1992
3	Ex.P3	Xerox copy of legal heir certificate by Tahsildar, Purasawakkam – Perambur Taluk	21/07/1992
4	Ex.P4	Consent affidavit of K.Ramamurthy	----

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

- | | | |
|---|-------|--------------|
| 1 | D.W.1 | Govindammal |
| 2 | D.W.2 | R.Rajeshwari |

List of Exhibits marked on the side of the Defendant

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Office copy of the notice sent by the defendant's counsel	02.01.2017

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11.07.2019

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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R.SUBRAMANIAN,J.

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Pre Delivery Judgment

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