

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.07.2019	Delivered on 29.07.2019
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

T.O.S. No.21 of 2010

M.Sasikala

... Plaintiff

Vs.

1. P. Bhanumathi
2. P.Santhana Lakshmi
3. R.Vasanthi
4. R.Mallika

... Defendants

Prayer : Plaintiff filed under Sections 232 & 276 of the Succession Act XXXIX of 1925 and order XXV Rule 5 of the Original Side Rules, 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.K.S.Sundar

For Defendants

: Mr.N.Nissar Ahmed

J U D G M E N T

The plaintiff had filed the Original Petition No.204 of 2008 seeking Letters of Administration with a copy of the Will annexed for the Will executed by late S.Saraswathi Ammal wife of M.V.Subramaniam, who died on 25.12.2005. The Will is dated 09.07.1991 and the same has been registered in the office of the Sub-Registrar, Sembiam, on the same day as Document No.65 of 1991.

2. The property subject matter of the Will originally belonged to one Chokkammal, who died leaving behind her two sons M.V.Subramaniam and M.V.Balakannan. M.V.Subramaniam, the elder son of Chokkammal, died on 04.06.1991, leaving behind his wife Saraswathi Ammal to succeed to his estate. Even during his life time, M.V.Subramaniam had filed a suit in OS No.659 of 1991 before the City Civil Court, seeking partition and separate possession of his half share in the suit property. On the death of M.V.Subramaniam, Saraswathi Ammal was substituted as the plaintiff and a preliminary decree for partition was granted in the said suit. While the couple, namely M.V.Subramaniam, and Saraswathi Ammal, did not have any issues, the other son M.V. Balakannan had five daughters. The one of the daughters of

M.V.Balakannan, namely, Sasikala was the petitioner in OP No.204 of 2008. The other four daughters were shown as respondents. Upon service of notice, the other four daughters filed a caveat opposing the grant. In view of the said caveat, the Original Petition in OP No.204 of 2008 was converted into a Testamentary Original Suit and numbered as TOS No.21 of 2010.

3. It is the case of the plaintiff that she was brought up by M.V.Subramaniam and Saraswathi Ammal as their foster daughter and she lived with them at their residence at No.11, North Mada Street, Kolathur, Chennai 600 099, while the other daughters lived with their parents, namely, M.V.Balakannan and his wife. It is claimed by the plaintiff that Saraswathi Ammal, out of love and affection, she had for the plaintiff executed a Will bequeathing the half share, she had in the property in favour of the plaintiff. Therefore, the plaintiff seeks Letters of Administration with a Will annexed in her favour.

4. The said prayer is resisted by the defendants contending that the Will executed by Saraswathi Ammal is not true and valid. Certain suspicious circumstances were also set out in the written statement. According to defendants, the fact that the Will was executed within 35 days

from the date of death of M.V.Subramaniam/husband of Saraswathi Ammal, is by itself a suspicious circumstance. It is also claimed that the non-disclosure of the Will in the proceedings in OS No.659 of 1991, the fact that the attesting witnesses to the Will are very close relatives of the plaintiff would also amount to suspicious circumstance surrounding the execution of the Will. It is further contended that there are certain discrepancies in the evidence of the attesting witnesses relating to the time of registration of the Will, which would make the execution and registration of the Will shrouded in the history.

5. Upon the written statement being filed, this Court framed the following issues for trial:

1. *Whether the Will dated 09.07.2018 executed by Saraswathi Ammal is true and genuine?*
2. *Whether the plaintiff is entitled to Letters of Administration?*
3. *To what other reliefs the plaintiff is entitled to?*

6. At trial, the plaintiff has examined herself as P.W.1. Two other witnesses, namely, Kadirvelu and Sarala Devi (attesting witness and identifying witness to the Will) were examined as P.Ws. 2 and 3. The third

defendant Vasanthi was examined as D.W.1 and the fourth defendant Malika was examined as D.W.2.

7. The plaintiff has produced the Original Will and the same was marked as Ex.P4. The Death Certificates of the deceased Chokkammal, M.V.Subramaniam and Saraswathi Ammal were marked as Exs.P1, P2 and P3 respectively. Though the husband of the plaintiff was appointed as the executor, he filed affidavit relinquishing his executorship and the said affidavit was marked as Ex.P5. The defendants have not produced any documents on their side.

8. I heard Mr.K.S.Sundar, learned counsel appearing for the plaintiff and Mr.N.A. Nissar Ahamed, learned counsel appearing for the defendants 3 and 4. Though the defendants 1 and 2 filed caveat opposing the grant, they did not choose to let in evidence and they remained *ex parte*.

Issue No.1:

9. Mr.K.S.Sundar, learned counsel appearing for the plaintiff would contend that the plaintiff has proved the execution of the Will by the testatrix by examining two of the attesting witnesses. According to him, the

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Will being a registered instrument cannot be lightly brushed aside. He would also draw my attention to Sections 59 and 60 of the Registration Act and contend that once endorsements are made by the Registering Authority, as required under Section 59 of the Registration Act, there arose a presumption as to their genuineness under Section 60(2) of the said Act. According to Mr.K.S.Sundar, the learned counsel appearing for the plaintiff there is no evidence in rebuttal of the said statutory presumption created by Section 60(2) of the Registration Act.

10. He would also draw my attention to the judgment of this Court in ***Dr.Kumari Shantha Arogyadoss v. Tmt. G.C.Kamala Sri Hari and ors.*** reported in **1999 (3) MLJ 577**, wherein this Court had held that a Certificate of Registration is *prima facie* proof of the execution of the document. Though this Court was concerned with the execution of the document which does not require a attestation, according to the learned counsel, the principles stated therein would apply the document which requires the attestation, more so, when the attesting witnesses have been examined. He would also submit that the very fact that the elder two daughters namely, defendants 1 and 2 have not chosen to oppose the grant should be considered by the Court in deciding on the genuineness or otherwise of the Will dated 09.07.1991.

11. Contending contra, Mr.N.A.Nissar Ahamed, learned counsel appearing for the defendants would submit that the execution of the Will is shrouded by following suspicious circumstances.

(i). The fact that the Will was executed within 35 days of the death of the testatrix.

(ii). The Will was not disclosed in the proceedings in OS No.659 of 1991.

(iii). The fact that the attesting witnesses are close relatives of the prepounder of the Will.

(iv). The fact that P.W.3, one of the attesting witnesses had deposed that she was not aware, as to whether, the testatrix had read and understood the contents of the Will.

(v). The fact that there is a discrepancy in the time of registration of the Will. While P.W.3 had deposed that the Will was presented for registration at 11.30 a.m., the document shows that the Will was actually presented for registration between 2.00 p.m. and 3.00 p.m.

12. The above, according to the learned counsel, would be suspicious circumstances, which will have to be taken into account while deciding the genuineness of the Will.

13. Mr.N.A. Nissar Ahamed, learned counsel, would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Dhannulal & Others v. Ganeshram & Others***, reported in **2015 (3) CTC 222**, in support of his submission that the execution of the Will is shrouded with suspicion. He would also draw my attention to the portions of the judgment of the High Court that were extracted by the Hon'ble Supreme Court to contend that the prepounder has a duty to clear all the suspicious that are attached to the execution of the Will, in order to succeed in proving the Will.

14. Pointing out the fact that the High Court in the said case had concluded that non disclosure of the execution of the Will in the written statement filed in an earlier legal proceeding would amount to suspicious circumstances and hence the Will should not be believed. He would also draw my attention to the judgment of the Division Bench of this Court in ***N.Govindarajan v. Leelavathy & others*** reported in **2011 (3) LW 774**, in support of his contention that there is no evidence to show that the testatrix

had knowledge of the contents of the Will at the time the Will came to be executed by her. He would also submit that there has been an unnatural disposition of property, in favour of one of the daughters of the brother-in-law of the testatrix, while all of them were treated equally by Saraswathi Ammal.

15. I have considered the rival submissions.

16. No doubt true that there is a discrepancy with regard to the time of execution of the Will, between the evidence of the attesting witness, namely, P.W.3 and the document itself. The Will was executed on 09.07.1991 and P.W.3 deposed before this Court on 12.10.2017, i.e. nearly 26 years after the event. Naturally by passage of time, it is likely that the witness cannot remember the exact time of the events that happened at the time of registration of the Will. Therefore, I am unable to countenance the submission of the learned counsel Mr.N.A. Nissar Ahamed, to the effect that the Will should not be believed, because of the discrepancy in the evidence of P.W.3 relating to the time and during which, it was presented for registration. It is seen from the original Will and the certificate of registration that the Will was executed on 09.07.1991 and the same was presented for registration between 2.00 p.m. and 3.00 p.m., on the same

day. The Registering Authority has made the endorsements as required under Section 59 of the Registration Act and it is clearly stated that execution of the Will was admitted by Saraswathi Ammal. Therefore, the discrepancy in the timing alone cannot be a ground to disbelieve the Will.

17. The other suspicious circumstances that is projected by the learned counsel for the defendants is that the Will was executed within 35 days from the date of the death of the testatrix. This regard the oral evidence that is available belies the contentions of the learned counsel. The plaintiff as P.W.1 as well as the attesting witnesses as P.Ws. 2 and 3 had very clearly stated that the mourning period for their community is only 16 days and after the 16th day ceremony they will even celebrate festivals. Therefore, the contention of the learned counsel that the fact that the Will has been executed within 35 days from the date of the death of the husband of Saraswathi Ammal, cannot be considered to be a suspicious circumstance that would vitiate the Will.

18. The next contention raised is that the attesting witnesses are very close relatives of the prepounder, namely, her husband's brother and sister. On this, evidence of P.Ws. 2 and 3 are very clear. P.W.2 Kadirvelu had deposed that Saraswathi Ammal had invited him to attest the Will

through his brother Mohan. He also deposed that Saraswathi Ammal, had discussed about making of the Will with him and his sister earlier. This evidence has been elicited the cross-examination of the said witness. P.W.3 Saraladevi, who is the sister of the plaintiff has also deposed that it was Saraswathi Ammal, who asked her to be present to sign the document as an attesting witness.

19. No doubt true that P.W.3 has stated that she did not ask Saraswathi Ammal, whether she read and understood the Will. As an attesting witness P.W.3 is not required to know the contents of the Will. She has spoken out about the fact that Saraswathi Ammal signed in her presence and herself and the other attesting witness P.W.2 affixed their signature in the presence of Saraswathi Ammal. Saraswathi Ammal had in fact admitted the execution of the Will, before the Registering Authority.

20. As rightly pointed out by Mr.K.S.Sundar, learned counsel appearing for the plaintiff, the statutory presumptions that are attached to a registered document would be available in the case of the registered Will also. Once the Registering Authority makes out a certificate as required under Section 59 of the Act, the certificate is presumed to be true under Section 60(2) of the Registration Act. Sections 59 and 60 of the

Registration Act, read as follows:

“59. Endorsements to be dated and signed by registering officer.—

The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day. 18

60. Certificate of registration.—

(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the Registering Officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the true copy of the document has been filed.

(2) Such Certificate shall be signed, sealed and dated by the registering officer, and shall, then, be admissible for the purpose of proving that the document has been duly

registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned.

21. As rightly pointed out by the learned counsel for the plaintiff that there is no evidence to rebut the statutory presumption created under the aforesaid provisions of the Registration Act. As regards the contention of Mr.N.A.Nissar Ahamed, that there is no proof to show that Saraswathi Ammal had knowledge of the contents of the Will, when she executed the Will. Mr.K.S.Sundar, learned counsel appearing for the plaintiff would 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**, wherein the Division Bench had 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."

22. As could be seen from the evidence on record, the execution of

the Will has been admitted by the testatrix, before the statutory authority, namely, the Sub Registrar. Hence I find that there is enough evidence to show that Saraswathi Ammal had knowledge of the contents of the Will. Yet another important factor which emanates from the evidence in this case is that both D.Ws.1 and 2, namely, the contesting defendants admit in their evidence that the plaintiff was allowed to be brought up by Saraswathi Ammal as her foster daughter. D.W.1 in her evidence has stated as follows:

*“After my marriage in 1982, I have been living in Secunderabad. **My father allowed the plaintiff Sasikala to be brought up by Saraswathi Ammal.** The plaintiff used to live along with Sarawathi Ammall as well as my father.”*

23. It is also admitted by D.W.1 that Sasikala lived in the Kolathur house along with Saraswathi Ammal and Saraswathi Ammal had executed a settlement in respect of the said Kolathur property in favour of the plaintiff Sasikala. D.W.2 in her evidence had deposed as follows:

“It is correct that my mother allowed Sasikala to be brought up by Saraswathi Ammal,

as at that time I was born and my mother found difficult to look after all the five children.”

She would further depose that

“It is not correct that Saraswathi Ammal alone brought up Sasikala, the plaintiff herein. She used to be both in our house and at Saraswathi Ammal’s house.”

But at the later portion of her evidence, she would admit that the plaintiff Sasikala continued to live in the house property of Saraswathi Ammal situate at Kolathur.

24. The above evidence would show that the plaintiff was brought up by M.V.Subramaniam and Saraswathi Ammal as their foster daughter and the Will also recites that the plaintiff was brought up by Saraswathi Ammal and her husband, since one year of her age as their daughter with great love and affection.

25. In view of the above specific admission by the defendants, I find that the disposition in the Will is quite natural and it cannot be termed as an unnatural disposition in disinheritance of the other heirs. Yet another factor which should be taken into account is the fact that defendants 1 and

2, who are the elder daughters of M.V.Balakannan, have not chosen to dispute the Will.

26. In view of the above, I find that the plaintiff has proved the Will and has also discharged the onus of removing the so called suspicion surrounding the execution of the Will and she is entitled to Letters of Administration with the copy of the Will annexed.

27. In fine the Testamentary Original Suit is decreed granting Letters of Administration in respect of the Will dated 09.07.1991 executed by Saraswathi Ammal in favour of the plaintiff. The plaintiff shall execute a bond for a sum of Rs.10,000/-.

29.07.2019

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 | M.Sasikala |
| 2. P.W.2 | S.Kadirvelu |
| 3. P.W.3 | Sarala Devi |

List of Exhibits marked on the side of the Plaintiff :

Sl.No.	Exhibits	Description of documents
1	Ex.P1	Original Death Certificate of Mrs.Chokkammal
2	Ex.P2	Original Death Certificate of Mr.M.V.Subramaniam
3	Ex.P3	Original Death Certificate of Mrs. S.Saraswathi Ammal
4	Ex.P4	Original Will executed by S.Saraswathi Ammal
5	Ex.P5	Consent affidavit filed by the Executor S.Mohan
6	Ex.P6	Affidavit of Assets

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

- | | | |
|---|-------|---------|
| 1 | D.W.1 | Vasathy |
| 2 | D.W.2 | Maliga |

List of Exhibits marked on the side of the Defendants: Nil

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29.07.2019

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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