

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/12/2019

C O R A M:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. Nos.4219, 4395 and 4251 of 2019

1.D.Mitra

2.D.Roopa

3.V.Rekha

Rep. by her Power Agent D.Mitra ... Appellants 1 to 3
in all CMAs

4.D.Preithviraaj ... 4th Appellant in
C.M.A. No.4219 &
4395 of 2019

Vs.

Nil ... Respondent in all WPs

Prayer: Civil Miscellaneous Appeals filed under Section 299 of the Indian Succession Act, to set aside the fair and decretal order dated 3.9.2019 made in Prob. O.P. Nos.23, 22 and 24 of 2019 on the file of Principal District Judge, Tiruppur.

For Appellant : Mr.K.Myilsamy

COMMON JUDGMENT

The present Civil Miscellaneous Appeals have been filed under Section 299 of the Indian Succession Act, to set aside fair and decretal order of the learned Principal District Judge, Tiruppur dated 3.9.2019 made in Probate O.P. Nos.23, 22 and 24 of 2019.

2. There are totally three Wills executed by the testators/testatrix. Will dated 30.1.1990 was executed by N.Vedanayaki, during her life time, in sound disposing state of mind, bequeathing her shares in favour of her husband Natarajan, adopted son Durairaj and the appellants herein. The testatrix died on 14.5.1990. Will dated 2.9.2001 was executed by Natarajan, during his life time, in sound disposing state of mind, bequeathing his properties in favour of the appellants and he died on 14.4.2003. Will dated 6.5.2001 was executed by Durairaj, during his life time, in sound disposing state of mind, bequeathing his properties in favour of the appellants and he died on 12.7.2001. After the demise of the testators/testatrix, the Legal Representatives have approached the Principal District Judge, Tiruppur, for probating the Wills.

3. The court concerned, has rejected the request of the claimants/legal representatives on the ground that, there are three witnesses, who have signed the Will and the third person is a scribe, who cannot be treated as a witness.

4. The only issue that arises for consideration in these civil miscellaneous appeals is, whether the scribe can be a witness or not?

5. As could be seen from the decision of the Hon'ble Apex Court in Mathew Oomen vs. Suseela Mathew reported in (2006) 1 SCC 519 wherein the scribe can be a witness, who had been examined as a witness in that case. The rejection that one of the first two attestors, has not been examined and the third attestor, who is a scribe, who alone has been examined, cannot be accepted. When the scribe has gone into the box and stated that he is one of the attestors, as a witness, in terms of the decision of the Apex Court, cited supra, the Wills can be accepted and probated. The genuineness as well as other aspects need to be gone into by the lower court, if there are disputes among the legal heirs. In terms of Section 68 of the Indian Evidence Act, 1872, there is no prohibition with regard to examination of a scribe as a witness when more than one person is a signatory to the document.

6. In view of the discussion and the decision cited supra, the orders of the learned Principal District Judge, Tiruppur, dated 3.9.2019 made in Probate O.P. Nos.23, 22 and 24 of 2019 are interfered with and set aside. The matters are remitted to the lower court for fresh orders, within a period of one month from the date of receipt of a copy of this judgment, in order to give a quietus to the issue. It is needless to mention that the issue regarding the acceptance of scribe's signature to the will need not be gone into, as this court, accepted the contention of the appellants herein and with regard to other aspects, the matter is left open.

7. With the above direction, the civil miscellaneous appeals are allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Asr

To

The Principal District Judge, Tiruppur

Copy to:

The Section Officer, VR Section, High Court, Madras.
+1cc to Mr.K.Myilsamy , Advocate SR.No. 105188

C.M.A. Nos.4219, 4395
and 4251 of 2019

A.SK(04/02/2020)

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