

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

O.S.A. No. 484 of 2018

S.Kannan

..Appellant

Rep by his General Power of
Attorney Mr.K.Narayanan

Vs.

1.S.Ravi

2.S.Booma

...Respondents

cause title accepted vide Court order
dated 09/11/2018

Prayer: Appeal filed under Order 39 Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the decree and judgment made in T.O.S.No.30 of 2011 (OP 680/10) dated 28.03.2017 on the file of this Court.

Prayer: Original Petition No.678 of 2009 was filed under section 232 and 276 of the Indian sucession Act, XXXIX of 1925 for the grant of Letters of Administration. Against this Petition a Caveat was filed on 26th of November 2010 by the Caveator. The Supporting affidavit was filed on 26th day of November 2010. As per Order of Court dated 02/02/2011 in O.P.No. 680/2010 the Original Petition is directed to be converted into testamentary Original Suit No. 30/11.

For Appellant : Mr.T.P.Kathiravan

For Respondents: Mr.M.Balasubramanian for R1

J U D G M E N T

(Delivered by M.M.SUNDRESH, J.)

This appeal is preferred against the judgment and decree rendered in T.O.S.No.30 of 2011 by which Letters of Administration was granted in favour of the 1st respondent/plaintiff.

2. The appellant and the 1st respondent/plaintiff are brothers. The father of the appellant and the 1st respondent/plaintiff by name S.Sriraman died on 24.07.2006. Two days prior to his death, he executed a Will dated 22.07.2006. Seeking to probate the aforesaid Will, the first respondent filed a probate petition before this Court. Though it was numbered in the year 2010, it appears that it has been filed much prior to that.

3. Though the appellant was aware of the Will executed by the deceased father, he did not take any steps immediately thereafter. A notice was issued to the first respondent through a lawyer, who was also the scribe of the Will on 04.06.2009. The first respondent replied through his counsel on 09.06.2009 stating that steps have already been taken to probate the Will. Since caveat was filed by the appellant, though the Will was not disputed, O.P.No.680 of 2010 filed was converted into Testamentary Original Suit No.30 of 2011. In the written statement filed, the appellant has stated as follows:-

"8. In the above circumstances, the 1st defendant herein prays that this Hon'ble Court may be pleased to probate the Will dated 22.07.2006 and permit this defendant to carry out the terms of the Will as Executor and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and render justice."

4. Thus, even in the written statement aforesaid, he had admitted the due execution of the Will. However, he did not come forward to depose before the Court, but executed a power of attorney in favour of his father-in-law. This is for the reason that he is residing permanently at Muscat as deposed by his father-in-law K. Narayanan as DW1. He has also stated that he did not know personally about the facts of the case. The written statement only proceeds to state that the appellant was not permitted to act as an executor of the Will.

5. Before the learned Single Judge, the following issues have been framed:-

"1. Whether the Will dated 22.07.2006 was executed by the testator Mr.S.Sriraman in the presence of attesting witnesses in a sound and disposing state of mind and if so, is it true and genuine document?

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

3. To what relief the plaintiff is entitled to?"

6. Since the Will was proved as required under the Indian Evidence Act and not disputed by the appellant, it was held that the Will was proved. However, it was contended by the appellant that he was prevented by the first respondent from executing the Will. The learned Single Judge did not agree with the aforesaid contention and, inter alia, held that the appellant was aware of the execution of the Will, did not take any steps to give effect to it and has not even come before the Court while executing the power of attorney in favour of his father-in-law. Accordingly, the suit was decreed as prayed for. Challenging the same, the present appeal has been filed.

7. Learned counsel appearing for the appellant has raised only one contention. It is submitted that the learned Single Judge did not take into consideration the legal notices and its contents. The aforesaid notices issued on behalf of the appellant by the counsel dated 04.06.2009 and 20.06.2009 would clearly show that the appellant was prevented from discharging his function to act as executor and, therefore, the judgment and decree rendered by the learned single Judge requires interference.

8. Per contra, learned counsel appearing for the first respondent/plaintiff submitted that the appeal itself is not maintainable. The Will is not in dispute. Even though the appellant was appointed as executor of the Will, he has not evinced any interest. The legal notice itself has been given after knowing the steps taken by the plaintiff. There is no explanation given for not taking any steps immediately. As these aspects were taken note of, no interference is required.

9. We do not find any merit in this appeal. The learned Single Judge correctly held that the appellant did not take any steps to probate the Will and discharge his functions as the executor of the Will. The Will is not in dispute. The findings of the learned Single Judge that the Will has been proved in the manner known to law is also not challenged before us. In fact, it is the specific case of the appellant that the Will is true and genuine. As rightly recorded by the learned Single Judge, the appellant was aware of the execution of the Will even at the earlier point of time. There is no explanation given for not taking any immediate steps. Though it has been stated that he was prevented from doing so, nothing prevented him from taking steps through the Court.

10. Merely giving legal notice after nearly three years from the date of the death of the deceased father would not suffice. The reply given by the first respondent/plaintiff also would indicate that by the time steps have been taken by him to give effect to the Will, admittedly, even as per the evidence of

DW1, the appellant was a permanent resident of Muscat. DW1 has also adduced that he does not know anything about the Will or the properties mentioned thereunder. He is the father-in-law of the appellant and is also at the advanced age. As these aspects have been rightly taken note of by the learned Single Judge, we do not find any error in the order of the learned Single Judge warranting interference.

11. Since the judgment and decree rendered by the learned Single Judge is confirmed, we permit the first respondent to execute bond for a sum of Rs.25,000/- in favour of the Assistant Registrar-II, Original Side, High Court, Madras within a period of four weeks from the date of receipt of a copy of this order. On furnishing the above security bond, Letters of Administration will be granted in favour of the first respondent to have effect throughout the whole of Tamil Nadu.

With the above said observation, the appeal stands dismissed. No costs. Consequently, connected CMP Nos. 23646 and 23647 of 2018 are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Assistant Registrar II,
Original Side, High Court,
Madras.

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

+1cc to Mr.M.Balasubramanian, Advocate, S.R.No. 23911

O.S.A. No. 484 of 2018

SKV(CO)
GN(24/04/2019)