

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	08.01.2020
Judgment pronounced on	04.02.2020

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

T.O.S. No. 16 of 2011
in
(O.P.No.572 of 2009)

K.Anuradha

... Plaintiff

VS

K. Govindaraj

... Defendant

Prayer: Testamentary Original Suit filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925, prayed that the petitioner may be allowed to prove the Will in common form and that probate thereof, to have effect limited to the State of Tamilnadu may be granted to her.

For Plaintiff : Mr. C.P.Hemkumar for
M/s.Ganesh & Ganesh

For Defendant : Mr. P.Santhaseelan

J U D G M E N T

This Testamentary Original Suit is filed by the daughter of the testatrix. The testatrix, Mrs.Dhanushkodi, was the wife of Mr.G.N.Krishna Rao and had three sons and two daughters. The Plaintiff is one of the daughters of Mrs.Dhanushkodi. Out of the three sons, two sons, namely, Mr.Narasingha Rao, who died as a bachelor on 10.08.2002, and Mr. K.Venkataraman, who died on 10.08.2002, predeceased the testatrix. The late Mr.K.Venkataraman is survived by his wife, Mrs.Malathy Venkataraman, and their son, Mr.V.Nandakumar, who are the third and fourth respondent in the Original Petition. The first respondent is another daughter of the testatrix and the second respondent is the only surviving son of the testatrix. At the instance of the second respondent in O.P.No.572 of 2009 was converted into T.O.S.No.16 of 2011 and the second respondent is the sole defendant. The testatrix ordinarily resided at No.90/2 Appu Street, Mylapore, Chennai-600 004, which is within the jurisdiction of this Court. The said testatrix executed her last Will and Testament dated 27.09.2009 in Chennai and the Plaintiff is the beneficiary under the said Will in respect of the property described in the schedule to the Petition.

2. I heard the learned counsel for the Plaintiff and the learned counsel for

the Defendant.

3. The learned counsel for the Plaintiff submitted as follows. The Plaintiff adduced evidence through two witnesses in order to prove the Will. The following witnesses were examined by the Plaintiff namely, K.Anuradha, the Plaintiff who was examined as PW-1 and A.Arul, one of the attesting witnesses as PW-2. The following five documents were exhibited through P.W.1:

Exhibits marked through PW-1

<i>Sl. No</i>		<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	Death Certificate of the deceased, namely, Mrs.K.Dhanushkodi	27.01.2009
2	Ex.P2	Last Will and Testament of K.Dhanushkodi (deceased)	27.09.1989
3	Ex.P3	Receipt issued by Pais, Lobo and Alwares, Advocates	27.09.1989
4	Ex.P4	A copy of the Settlement Deed, registered as Document No.1917 of 2007	20.02.2007
5	Ex.P5	Certified copy of the order dated 10.03.2014 passed in Contempt Petition No.369/2011, High Court, Madras.	10.03.2014

4. As stated above, one of the attesting witnesses, namely, Mr.A.Arul,

was examined as PW-2. His affidavit was exhibited as Ex.P6 and he testified that he knew the testatrix as one of his clients and that she executed her last Will and Testament on 27.09.1989 in his presence and in the presence of his senior, Mr.Irwin Aaron. He further deposed that the testatrix was in a sound, disposing state of mind, memory and understanding at the time of execution of Ex.P2, namely, the Will.

5. Based on the aforesaid, the learned counsel submitted that the Will was duly proved. As regards the defence taken by the contesting Defendant, he submitted that the main defence was that the Will had been forged but that no evidence was adduced by the Defendant to prove forgery.

6. In response, the learned counsel for the Defendant submitted that the original owner of the property, which is the subject matter of the bequest under the Will, is the son of the testatrix, namely, Mr.Narasinga Rao, who died as a bachelor intestate on 22.09.1988. In particular, he pointed out that the property was purchased by the late Narasinga Rao on 14.07.1986 under Document No.1048/1986. He also pointed out that although the Letters of Administration in respect of the estate of the late Narasingha Rao was referred to, the Plaintiff

did not produce or exhibit the said Letters of Administration. He further submitted that the property was grossly undervalued in the affidavit of assets. He further submitted that the sole Defendant, K.Govindaraj, was examined as DW-1 and one document was exhibited through him.

Exhibit marked through DW-1

<i>Sl. No</i>		<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Legal notice issued by K.Govindaraj	01.06.2009

7. With regard to the execution of the Will, he submitted that the testatrix had only completed the 5th Standard and was virtually an illiterate. By referring to the cross-examination of PW-1, he pointed out that PW-1 deposed that the Will was prepared by the testatrix based on the instructions given by the Advocate and, thereafter, signed in his presence. By contrast, he pointed out that the attesting witness, PW-2, deposed that the Will was prepared in the Office of the Advocate, namely, S.A.P.Alvares. By referring to these contradictions with regard to the place of preparation of the Will, the learned counsel concluded his submissions by stating that these are suspicious circumstances and that the suit is liable to be dismissed because the Plaintiff failed to prove the Will as per law.

8. By way of rejoinder, the learned counsel for the Plaintiff submitted that it is undisputed that the property was originally purchased by the testatrix's son, namely, the late Narasingha Rao. In this regard, he submitted that it is also undisputed that Narasingha Rao died intestate as a bachelor. Consequently, the testatrix was the only Class I legal heir of the said Narasingha Rao. As a result, the testatrix became the sole owner of the property and was, therefore, entitled to write a Will and bequeath the property under the Will. With regard to proof of the Will, he pointed out that the Will was executed at the Advocate's office, as stated by PW-1 during her deposition on 06.02.2018. He further submitted that this was established by marking the receipt issued by the Advocate towards fees for the preparation of the Will as Ex.P3. By referring to the deposition of the Defendant, who was examined as DW-1, the learned counsel for the Plaintiff pointed out that DW-1 admitted that his mother, the testatrix, used to sign in Tamil. He further pointed out that DW-1 admitted that he had not lodged any complaint that a forged Will had been created. He further pointed out that DW-1 had admitted that he did not have any document containing his mother's signature. Significantly, he submitted that DW-1 also admitted that he did not have any evidence to prove that the Plaintiff had forged the Will as stated in his

proof affidavit.

9. I considered the submissions of the learned counsel for the respective parties and also examined the records, including the evidence recorded in this case. Upon considering the pleadings, this Court framed the following issues:

- (1) Whether the Will dated 27.09.1989 executed by K.Dhanushkodi is genuine, true and valid and executed in sound state of mind or whether it is forged and a fraudulent document as claimed by the defendant?
- (2) Whether the Will has been proved in manner known to law?
- (3) To what relief are the parties entitled to?

10. Therefore, the question to be decided is whether the Plaintiff has proved the Will in accordance with the Indian Evidence Act, 1872 and the Indian Succession Act, 1925. In order to prove the Will, the plaintiff adduced evidence by examining herself as PW-1. The Death Certificate of the Plaintiff's mother and testatrix was marked as Ex.P1. The original Will executed by the testatrix was marked as Ex.P2 and evidence was adduced through PW-2 with regard to the signature of the testatrix, the execution of the Will and her sound and disposing state of mind when the Will was executed.

11. In light of this evidence, one needs to consider the defence of the Defendant. The contentions of the Defendant were that the property originally belonged to his brother, the late Narasingha Rao, and that the Letters of Administration in respect of the estate of Narasingha Rao were not produced by the Plaintiff. However, the Defendant admits that the late Narasingha Rao died intestate as a bachelor. Once the said fact is admitted, it follows that the testatrix was the only Class I legal heir of the late Narasingha Rao. Consequently, the testatrix succeeded to the property as the absolute owner and became entitled to bequeath the property under the Will. The other aspect on which the learned counsel for the Defendant focused were some contradictions with regard to the preparation of the Will. In particular, he pointed out that PW-1 deposed that the Will was prepared by the testatrix as per the instructions of the Advocate and, thereafter, it was taken to the Advocate's Office for execution. On the other hand, PW-2 deposed that the Will was prepared at the Advocate's Office at No.64, Catholic Center Annex, Armenian Street, Chennai. By relying upon this discrepancy, the learned counsel for the Defendant submitted that it establishes that the Will was not duly executed by the testatrix. I am unable to accept this contention. The Will was executed on

27.09.1989, whereas evidence was adduced by PW-1 in the year 2018. On account of the lapse of considerable time, there is bound to be some confusion with regard to the manner of preparation of the Will. In any event, it is not material as to whether the Will was prepared at the testatrix's residence or in the Advocate's Office. The significant aspect is whether the Plaintiff has established that the Will was duly executed by the testatrix. In this case, the Defendant alleged that the Will was forged; however, during the evidence of the Defendant, who was examined as DW-1, he admitted that he has not produced any document containing the signature of the testatrix so as to prove that the Will is forged. In fact, during his cross-examination dated 14.03.2019, the Defendant admitted that he did not have any evidence to prove that the Will is forged.

12. Upon examining the evidence recorded in this case, I have no hesitation in concluding that the Plaintiff has proved the Will in accordance with law.

13. Consequently, the suit is decreed by granting a probate of the last Will and Testament dated 27.09.1989 of Mrs.K.Dhanuskodi to the plaintiff to

have effect limited to the State of Tamil Nadu. The Plaintiff shall also provide a true and fair inventory and render true and fair accounts of the properties and credits of the estate of the testatrix within six months and one year, respectively, of the date of decree. There will be no order as to costs.

kal/rrg
Speaking/Non Speaking order
Index: Yes/No
Internet: Yes/No

04.02.2020



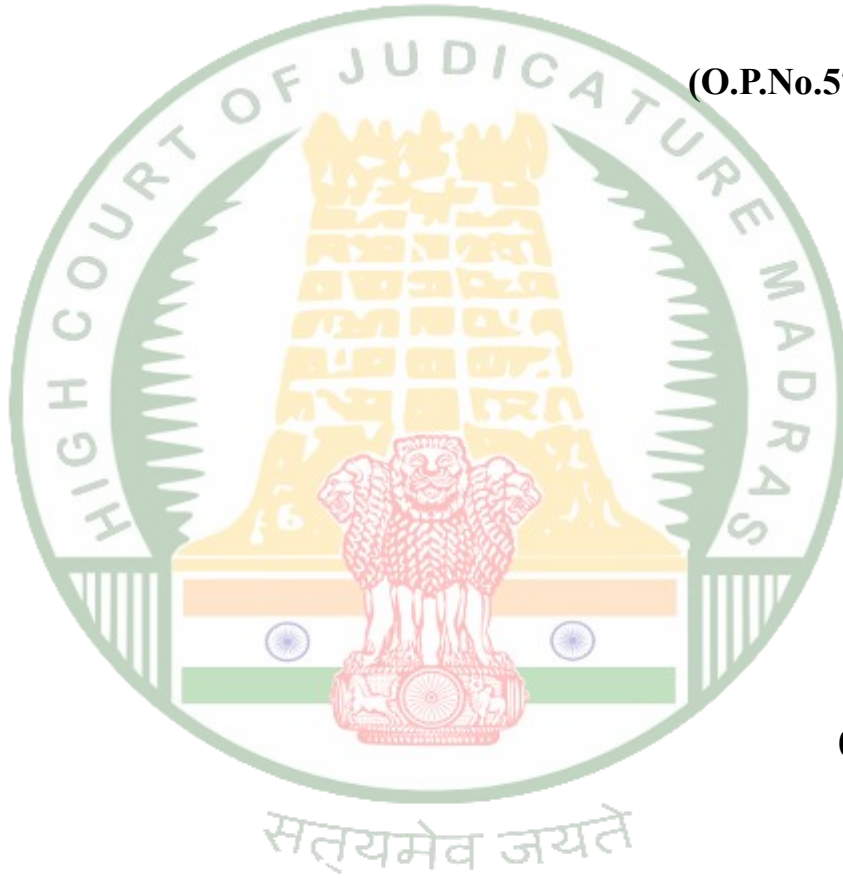
WEB COPY

SENTHILKUMAR RAMAMOORTHY, J.
kal/rrg

T.O.S.No.16 of 2011

T.O.S. No. 16 of 2011

in
(O.P.No.572 of 2009)



04.02.2020

WEB COPY