

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	06.02.2020
Judgment pronounced on	19.03.2020

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

T.O.S.No.20 of 2017

T.Baskaran

... Plaintiff

VS.

1.Mrs.Hemavathy

2.Mrs.Rani

3.Mrs.Jayanthi

... Defendants

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act 1925 and Order XXV Rule 5 of Original Side Rules, praying to issue Letters of Administration with the Will annexed may be granted to him as the grandson and the legatee under the Will of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiff : Mr.A.M.O.Gurunarayana for
M/s. Hari & Guru Associates

For Defendants : Mr.K.G.Vasudevan for
Mr.S.Chandramohan

J U D G M E N T

This testamentary suit was originally filed as O.P. No.37 of 2017 for the grant of Letters of Administration with the Will annexed in respect of the propounded last Will and Testament dated 19.09.1997 of Mrs.Kanthammal, who died on 18.09.2004.

2. The Plaintiff is the grand son of the testatrix. The Defendants are the mother and sisters of the Plaintiff. As stated earlier, the propounded Will is stated to be executed on 19.09.1997 and also registered on the file of the Sub Registrar, Ashok Nagar as Document No.48 of 1997 in Book No.3. The witnesses to the said Will were Mr.S.Subramanian and late Mr.P.N.Selvaraj, who are stated to be family friends of the testatrix. The original Will is stated to be misplaced and lost. Therefore, the Plaintiff lodged a police complaint and the Police Department issued a non-traceable certificate. The Defendants herein lodged a caveat and, therefore, O.P. No.37 of 2017 was converted into T.O.S. No.20 of 2017. The Plaintiff examined two witnesses: the Plaintiff, who was

examined as P.W.1; and one of the attesting witnesses, namely, Mr.S.Subramanian, who was examined as P.W.2. Each of the witnesses were cross-examined by the learned counsel for the Defendants. As regards the Defendants, the first Defendant was examined as D.W.1 and the second Defendant was examined as D.W.2. Both these witnesses were cross-examined by the learned counsel for the Plaintiff.

3. Upon consideration of the pleadings, this Court framed the following issues:

- (i) Whether the Will sought to be probated is a genuine one?
- (ii) Whether the execution of the Will is surrounded by suspicious circumstances?
- (iii) Whether probate should be denied due to delay in applying for probate?
- (iv) Whether the will suffers due to unnatural disposition?
- (v) Whether will is obtained by force and undue influence?

(vi) Whether the Plaintiff herein is entitled to probate of the registered will dated 19.09.1997 of the deceased Mrs.Kanthammal as prayed for?

4. I heard the learned counsel for the Plaintiff and the learned counsel for the Defendants.

5. The learned counsel for the Plaintiff first provided a brief overview of the facts of the case. In order to prove the Will, the learned counsel pointed out that evidence was adduced by examining the Plaintiff as P.W.1 and by examining one of the attesting witnesses, namely, Mr.S.Subramanian as P.W.2. He referred to the proof affidavit of the attesting witness and pointed out that the said attesting witness deposed that, on 19.09.1997, he was present together with the late P.N.Selvaraj in the house of Mrs.Kanthammal and witnessed the testatrix subscribe her name in Tamil at the foot of the Will. He also pointed out that the testatrix was in a sound disposing state of mind, memory and understanding at the time of execution of the Will. He also referred to the cross-examination of P.W.2 by the learned counsel for the Defendants. From the said cross examination, he pointed out that P.W.2 deposed that the testatrix herself called P.W.2 and requested him to attest the Will. He also

pointed out that P.W.2 lived in the house opposite that of the testatrix and, therefore, knew her well. He pointed out that P.W.2 also deposed that the testatrix showed him a Will at her house and asked him to accompany her to the SRO for registration of the Will. Thereafter, the testatrix signed the Will at the Sub Registrar Office and not in her house.

6. The learned counsel, thereafter, referred to the evidence of D.W.1. By referring to the cross examination of D.W.1 on 10.04.2019, he pointed out that D.W.1 admitted that she resided at Alandur along with her second daughter Jayanthi(the third Defendant herein). For all these reasons, he submitted that the Will has been duly proved in accordance with Section 68 of the Indian Evidence Act,1872, and, therefore, the Plaintiff is entitled to the grant of Letters of Administration.

7. On the contrary, the learned counsel for the Defendants submitted that there are several suspicious circumstances relating to the execution of the Will. In particular, he pointed out that the disposition under the Will is unnatural. The daughter of the testatrix, namely, the first Defendant is excluded from the bequest. Equally, the grand daughters, namely, the

Defendants 2 and 3, are also excluded. The second suspicious circumstance is the execution of multiple Wills and the cancellation thereof. In particular, the learned counsel referred to the cancellation of the Will dated 10.07.1981, which was registered as Document No.30 in Book No.3 at the Sub-Registrar Office in Ashok Nagar, Deed of Cancellation dated 09.08.1995 (Ex.D-2). By the Deed of Cancellation, the Will dated 10.07.1981 whereby the property was bequeathed to the Plaintiff herein was cancelled. He, thereafter, referred to the Will dated 19.08.1996 in terms of which the assets of the testatrix were bequeathed by way of a life estate to her daughter, Hemavathi, and, thereafter, to her grand daughters. This was followed by the Will dated 27.11.1996 whereby the property was bequeathed by way of a life estate to the daughter and, thereafter, the three grand children, namely, the Plaintiff and Defendants 2 and 3 were given absolute estate. Thus, the learned counsel for the Defendants contended that the testatrix did not execute the Will dated 19.09.1997 of her own free will or volition but under the undue influence of the Plaintiff. In this connection, he pointed out that the Plaintiff was admittedly residing in the same property as his grand mother as stated by him in paragraph 5 of the Petition/Plaint. He next referred to the proof affidavit of D.W.2, wherein it is stated that the testatrix

was surreptitiously taken to the Sub Registrar's Office by the Plaintiff and made to execute the Will. The learned counsel also pointed out that it is stated in paragraph 6 of the Petition/Plaint that the original Will was misplaced and lost. However, no details were provided either in the Petition or in the proof affidavit as to when and where the said will was lost. Even the complaint with regard to the loss of the Will was made on 12.04.2016 and the Inspector of Police B-4, High Court Police Station issued the non- traceable certificate on 20.04.2016.

8. I considered the submissions of the learned counsel for the respective parties and examined the evidence recorded in this case.

9. The issues that were framed by this Court are set out supra in paragraph 3. Out of the said 6 issues, I propose to deal first with the delay in applying for probate.

Issue No.3:

10. The Plaintiff filed O.P.No.37 of 2017 on 20.07.2016. The propounded last Will and Testament of Mrs.Kanthammal is said to be executed on 19.09.1997 and she died on 18.09.2004. Thus, there is a delay of about 12

years. As per Order XXV Rule 9 of O.S. Rules, if the petition for probate / Letters of Administration is filed after three years from the death of the testator/testatrix, the delay in filing the petition should be explained. In this case, the testatrix died on 18.09.2004. Therefore, ordinarily the petition should have been filed on or before 17.09.2007, whereas it was filed on or about 20.07.2016, i.e. there is a delay of about 12 years. In the petition, there is no explanation at all for the delay. However, at paragraph 11 of the proof affidavit of the Plaintiff, who was examined as P.W.1, it is stated that he is a layman and, therefore, he did not have legal knowledge that a probate of the Will should be obtained. It is further stated that he recently learnt through his family friend that a probate is required and, therefore, filed the Petition for grant of Letters of Administration. I find that the said explanation is not satisfactory. It is also pertinent to note that the longer the delay, the greater the suspicion. However, I propose to deal with the other issues before drawing any conclusions on the implications of the belated filing of the original petition.

11. Issue Nos.2, 4 and 5 relate to whether the execution of the Will is surrounded by suspicious circumstances and whether the Will was obtained by force and undue influence. I propose to deal with these three issues in a consolidated manner.

Issue Nos.2, 4 and 5:

The learned counsel for the Defendants alluded to the suspicious circumstances that surrounded the execution of the Will. The first of these is that the disposition under the Will is unnatural in as much as the only daughter of the testatrix and her grand daughters were excluded under the Will. In this regard, the learned counsel also pointed out that one of the grand daughters is physically handicapped and that the disposition appears even more unnatural when this aspect is taken into consideration. On perusal of the Will, I find that no explanation is provided in the Will for excluding the daughter and grand daughters. In this connection, it is also pertinent to draw reference to the fact that the testatrix executed and cancelled multiple Wills in the past. For instance, a Will dated 10.07.1981 was executed, whereby the bequest was in favour of the Plaintiff herein. The said will was cancelled by deed of cancellation dated 09.08.1995 which is marked as Ex.D2. In the said deed of cancellation, it is stated that the property was bequeathed to the grand son on account of the affection and love of the testatrix for her grand son and in the expectation that he would continue to shower love and affection on the testatrix. It is further stated that shortly after the execution of the Will, the Plaintiff did not display any love or affection and instead indulged in

unnecessary disputes and also kept bad company. Therefore, the testatrix decided that he would not maintain the property properly and, consequently, revoked the Will dated 10.07.1991 on 09.08.1995. Thereafter, it appears that the testatrix executed the Will dated 19.08.1996 (Ex.D-3), whereby a life estate was bequeathed in favour of her daughter and an absolute estate in favour of her grand daughters. Thereafter, the Will dated 27.09.1996 was executed. By this Will, the earlier Will dated 19.08.1996, which was registered as Document No.152 of 1996 on the file of the Sub Registrar, Kodambakkam, was cancelled. In addition, I find that the propounded Will refers to and cancels a Will dated 13.05.1996, which was registered as Document No.97 of 1996 but it does not refer to the Wills dated 19.08.1996 or 27.11.1996. The very fact that about 4 Wills were executed by the testatrix and the legatees thereunder vary indicates one of two things, i.e. that she had a vacillating mind or was unduly influenced either by her grand son or by the daughter and grand daughters to change the Will from time to time. Therefore, I am of the view that the execution of multiple Wills is a suspicious circumstance that should be taken into consideration while deciding as to whether the Will has been duly proved. During the cross examination of P.W.1, he admitted that his grand mother cancelled the Will of 1981 in 1995 because she did not like his activities. He

also admitted that he did not know as to when his father died and that he did not attend his father's funeral because he did not like his father. He also stated, during his cross examination on 11.01.2019, that he did not know when and where his grand mother executed the Will of 1997. With regard to the date of knowledge of the said Will, he stated that he came to know of the propounded Will on the 16th day of his grand mother's demise. During the cross examination on 28.01.2019, P.W.1 stated that he lived in Pushpavathi Ammal street, West Mambalam as a tenant at the time of execution of the Will and that the testatrix lived alone in the property bequeathed under the Will. However, he admitted that he did not file any document to establish that he resided at Pushpavathy Ammal Street, West Mambalam in 1997. With regard to the date of loss of the Will, he stated that it was lost when he came to the XVI Assistant City Civil Court, Chennai in connection with the civil suit filed by his mother against him. In response to a question as to how he obtained the Will, he admitted that the Will was in the possession of his mother-in-law, Amirthavalli Ammal, and that he did not enquire as to how his mother-in-law obtained possession of the Will. The fact that the Plaintiff came to know about the Will from his mother-in-law on the 16th day after the death of the testatrix and that the mother-in-law was in possession of the Will is indeed a suspicious circumstance. This

suspicion becomes more significant on account of the non-disclosure of these facts in the petition.

12. From the cross-examination of P.W.2 on 07.03.2019, I find that he deposed that he knew the testatrix, Kanthammal, for about 30 years because she resided opposite to his house. After stating that he knew her for 30 years, he stated that he did not know how many children Kanthammal had. He also admitted that he identified a bride for the Plaintiff, Baskaran, and helped in celebrating the marriage of Baskaran. He also denied the suggestion that Baskaran did not help Kanthammal during her old age and, in fact, added that Baskaran and his wife used to visit Kanthammal often. From the above evidence, I find that it is clear that P.W.2 was a close acquaintance of the Plaintiff, Baskaran. It is also strange that he deposed that he did not know how many children Kanthammal had in spite of knowing Kanthammal for about 30 years. He also stated that he did not know if Kanthammal knew how to read and write Tamil and as to whether the contents of the Will were read and explained to Kanthammal. When the above evidence is analysed, I find that P.W.2 appears to have been closely associated with the Plaintiff, whereas he did not know the testatrix, Kanthammal, very well. Based on the aforesaid, I conclude

that there are many suspicious circumstances surrounding the execution of the Will, the disposition under the Will is unnatural and that the circumstances indicate that the Will could have been obtained by exercising undue influence on the testatrix.

13. Issue Nos.1 and 6:

I now propose to consider as to whether the Will is genuine and whether the Plaintiff is entitled to letters of administration in respect of the Will. While answering Issue Nos.2,4 and 5, I concluded that there are multiple suspicious circumstances surrounding the execution of the Will and that the disposition is unnatural. I also concluded that there are indications that the Will could have been obtained by exercising undue influence on the testatrix. While answering issue No.3, I concluded that the delay in applying for letters of administration had not been properly explained. When the facts and evidence are viewed in totality, the following aspects are discernible:

(i) The original Will is stated to be lost during the proceedings before the XVI Assistant City Civil Court, Chennai. No proper explanation has been provided as to how it was lost.

(ii) The delay of about 12 years in filing the Petition has not been properly explained.

(iii) The testatrix admittedly executed earlier Wills dated 10.02.1981, 13.05.1996, 19.08.1996 and 27.11.1996. None of the Wills were referred to by the Plaintiff in O.P.No.37 of 2017. The propounded Will also does not refer to the Wills dated 19.08.1996 and 27.11.1996.

(iv) Evidence was adduced through one attesting witness, namely, S.Subramanian, and it is clear from his cross examination that he was closely associated with the Plaintiff but did not know much about the testatrix.

(v) P.W.2 stated that he did not know as to whether the testatrix could read and write Tamil and as to whether the Will was read over and explained to her.

(vi) The disposition is unnatural in as much as the daughter is disinherited and so are the grand daughters, including one grand daughter who is physically handicapped.

(vii) The Will was in the possession of the Plaintiff's mother-in-law with no proper explanation as to how and why it was in her possession.

When the above facts and circumstances are viewed cumulatively, the conclusion that follows is that the Will has not been duly proved and, consequently, the suit is liable to be dismissed.

14. In the result, T.O.S. No.20 of 2017 is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

19.03.2020

Plaintiffs' witnesses:

1.Mr.T.Baskaran : P.W.1

2.Mr.S.Subramanian : P.W.2

Defendants' witnesses:

1.Mrs.Hemavathy : D.W.1

2.Mrs.Rani : D.W.2

Documents exhibited by Plaintiff:

<i>Sl.No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1.	Ex.P1	19.09.1997	Copy of the Will
2.	Ex.P2	01.10.2004	Original death certificate of D.Kanthammal
3.	Ex.P3	15.07.1971	Certified True copy of the Sale Deed in the name of Kanthammal.
4.	Ex.P4	-	Photocopy of the Property Tax demand card
5.	Ex.P5	-	Photo copy of the CMWSSR Receipt card.

<i>Sl.No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
6.	Ex.P6	20.04.2016	Photocopy of the Non Traceable Certificate issued by the Tamil Nadu Police Department.
7.	Ex.P7	26.05.2016	Original Letter issued by the Tahsildar, Mambalam Taluk regarding non issuance of Legal Heirship Certificate.

Documents exhibited by Defendants:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1.	Ex.D1	-	Written Statement filed by Petitioner in O.S.No.2481 of 2013.
2.	Ex.D2	09.08.1995	Certified copy of Cancellation Deed.
3.	Ex.D3	19.08.1996	Certified copy of the Will
4.	Ex.D4	27.11.1996	Certified copy of the Will

19.03.2020

Speaking order

Index: Yes

Internet: Yes

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SENTHILKUMAR RAMAMOORTHY, J.
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Pre-Delivery Judgment
in
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19.03.2020