



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.01.2020
Delivered on	07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD)No.260 of 2008

1.R.Sivagamiammal
2.R.Bhuvaneshwari
3.R.Karthikeyan
4.R.Gunaseelan
5.R.Valliammal
6.R.Malarkodi

: Appellants

Vs.

1.Vijayalakshmi
2.P.Thatchinamoorthy
3.Rajalakshmi (Died)
4.Dr.P.Sivasubramaniam (Died)
5.Subbulakshmi
6.P.Narayanasamy
7.Lalitha
8.Premakumari
9.V.Geetharani
10.Alameluammal
11.S.Anand

[Respondents 8 and 9 brought on record as Legal Representatives of the deceased third respondent and Respondents 10 and 11 brought on record as Legal Representatives of the deceased fourth respondent, vide Court order dated 18.04.2016, made in M.P.(MD)Nos.1 to 3 of 2013 and M.P.(MD)Nos.4 to 6 of 2013 respectively, in A.S.(MD)No.260 of 2008]

: Respondents

PRAYER: Appeal is filed under Section 96 of the Code of Civil Procedure, praying to allow the appeal and set aside the judgment and decree in O.S.No.122 of 2006 on the file of the Additional District Court (Fast Track Court No.I), Thanjavur, dated 29.02.2008.

For Appellants

: Mr.K.Baalasundharam

For Respondents 1,3&4

: Died



For Respondents 2,5to7

: Mr.M.Karunanidhi

For Respondents 10&11

: Mr.V.Chandrasekar

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Aggrieved over the dismissal of the suit filed for partition, the present First Appeal is filed by the legal heirs of the plaintiff, namely Ramadoss (since deceased).

2. The brief facts leading to the filing of this appeal are as follows:

2.1. The deceased plaintiff-Ramadoss and the defendants in O.S.No.122 of 2006 are the legal heirs of one Govindammal. The plaintiffs 1 to 6 were impleaded as legal heirs of the deceased plaintiff-by name Ramadoss. An extent of 9275 square feet with building bearing Door No.64 of 3003 was purchased by the mother of the deceased plaintiff and the defendants, namely Govindammal for a valid consideration on 31.08.1973. The said Govindammal has settled an extent of 3780 square feet to the fourth defendant, by a registered settlement deed dated 28.11.1985. She retained the remaining extent i.e., 5495 square feet. The said Govindammal died intestate on 06.09.1991, leaving the deceased plaintiff and the defendants as her legal heirs. Therefore, the deceased plaintiff and the defendants 1 to 7 are all entitled to 1/8th share in the suit property. The fourth defendant is making arrangement to alienate the property. Despite the request made by the deceased plaintiff for amicable partition, there was no response. Hence, the suit.

2.2. The fourth defendant, by name Dr.P.Sivasubramanian, who was the main contesting defendant, filed a written statement, which was adopted by others. The defendants 1 to 3 and 5 to 7 in O.S.No.122 of 2006 filed a memo adopting the written statement of the fourth defendant. Besides, they also admitted that the suit property belongs to the fourth defendant. It is the case of the fourth defendant that he was working as a Professor of Medicine of Thanjavur Medical College. In the year 1961, he was appointed as Gazetted Medical Officer in the Army during Chinese aggression. Similarly, during Pakistan aggression, he served in Jammu and Kashmir in the Army on deputation. Afterwards, he served in various Governmental institutions. Finally, he retired as Professor of Medicine in Thanjavur Medical College. He has purchased the suit property in the name of Govindammal. The mother of the deceased plaintiff had executed a registered Will in favour of this defendant in respect of the suit property on 29.05.1989, while she was in sound disposing state of mind. The deceased plaintiff Ramadoss also attested the said Will at the



time of execution. But, when the Will was presented for registration, he struck off his signature. Therefore, it is denied that the mother died intestate. The property, which was purchased in the name of the mother of the deceased plaintiff and this defendant, was fully transferred in favour of this defendant. Possession was also handed over to him. This defendant has paid all necessary taxes and charges to the relevant Departments and Authorities. Hence, he prayed for dismissal of the suit.

2.3. The Trial Court has framed three issues, which are as follows:

"(i) Is it true that the property was purchased by Govindammal, as contended by the plaintiffs?

(ii) Is it true that the property was purchased by Govindammal out of the self-earnings of the fourth defendant?.

(iii) Whether the plaintiffs are entitled to 1/8th share?".

2.4. On the side of the plaintiffs, P.W.1 was examined and Exs.A.1 to A.10 were marked. On the side of the defendants, the fourth defendant was examined as D.W.1, the sixth defendant was examined as D.W.2 and one of the attesting witnesses was examined as D.W.3 and Exs.B.1 to B.11 were marked.

2.5. On the basis of the evidence both oral as well as documentary, the Trial Court answered the issues as against the plaintiffs and dismissed the suit, against which, the present First Appeal is filed.

3. The learned counsel appearing for the appellants vehemently contended that Ex.B.3 - Will is not proved in a manner known to law. The same is shrouded with serious suspicious circumstances. The evidence of the attesting witness does not satisfy the requirement of law to prove the Will. The deceased plaintiff (Ramados) also signed as one of the attesting witnesses, whereas, later, he scored out his signature. It is one of the circumstances creating a serious doubt about the Will and the evidence of D.W.1 is also contradictory with regard to the date of execution of the Will. Hence, it is his contention that the Will has not been properly proved and the Trial Court has also not framed any specific issue with regard to the proof of Will. Hence, it is submitted that as the Will has not been proved in a manner known to law, the plaintiffs/appellants are certainly entitled to share in the property. In support of his submissions, he has relied upon the following judgments:

"(i) Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria [2008(15) SCC 365];

(ii) K.Laxmanan v. Thekkayil Padmini [2008(6)



(iii) Rayakkal (Deceased) v. N.Ramasamy [2018 (2) MLJ 42]."

4. Whereas, the learned counsel appearing for the respondents 10 and 11 has submitted that the respondents 10 and 11 are the legal heirs of the fourth defendant in the suit, who was the main contesting defendant. The learned counsel submitted that the mother has executed a Will in favour of the fourth defendant on 29.05.1989 while she was in sound disposing state of mind. It is his contention that even the deceased plaintiff, the brother of the fourth defendant, has signed the Will. However, later, he has scored out his signature and it is the duty of the deceased plaintiff to explain under what circumstances the signature was scored out. Whereas, his presence in the Registrar's Office along with his mother clearly proves the fact that Govindammal was in sound state of mind and out of her own volition, executed a Will in favour of the fourth defendant. It is his contention that the suit property was originally purchased in the name of Govindammal out of the earnings of the fourth defendant. He was working as Doctor in various places including Army. Ex.A.2-settlement deed in respect of the remaining suit property clearly proves the fact that Govindammal has consciously executed a Will in respect of the entire property, since she has purchased the property out of the income earned by the fourth defendant. That was the reason, Govindammal has executed a Will in favour of the fourth defendant. All other legal heirs are also aware of the said fact and that they also filed a memo before the Trial Court admitting that the property was purchased with the income of the fourth defendant. Even, the deceased plaintiff was aware of the fact. Govindammal died in the year 1991 itself. The suit has been filed after 15 years. The deceased plaintiff, being aware of the Will, accompanied his mother to the Registrar's Office and pleading in the plaint as if his mother died intestate itself indicates that the suit is nothing but an attempt to grab the property. It is his contention that there is no suspicious circumstance whatsoever attached in the Will. The Will is a registered Will. D.W.3, one of the attesting witnesses, has clearly spoken about the attestation as well as execution. Though there is no specific issue as to the proof of Will, the Trial Court has considered the evidence of the attesting witness and others and arrived at a finding as to the proof of the Will. Hence, it is submitted that the Trial Court has rightly found that the Will has been executed properly and dismissed the suit, which does not require any interference at the hands of this Court. Mr.M.Karunanidhi, learned counsel for the respondents 2 and 5 to 7 adopted the same argument.

5. In the light of the above submissions, now, the points arose for consideration in this appeal are,

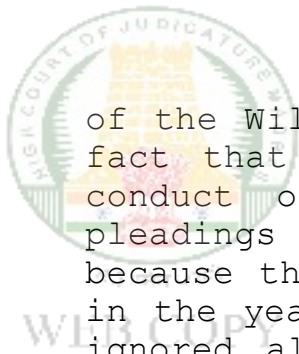


"(i) Whether Ex.B.3-Will has been proved in a manner known to law? and

(ii) Is there any suspicious circumstance surrounding the Will, if so, the same has been disputed by the propounder of the Will?

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6. The suit has been originally laid by the deceased plaintiff-Ramadoss, who is one of the sons of Govindammal, whose name, the suit property was originally purchased. It is not in dispute by both sides that the property was originally purchased in the name of the mother Govindammal under Ex.A.1 dated 31.08.1973. It is also not in dispute that out of 9275 square feet purchased under Ex.A.1, 3780 square feet was settled in favour of the fourth defendant on 28.11.1985 under Ex.A.2. It is also relevant to note that originally the plaint was filed by the deceased plaintiff. Thereafter, his legal heirs were impleaded during the pendency of the suit. The deceased plaintiff-Ramadoss was examined himself as P.W.1 during trial. This fact is not in dispute. It is the case of the deceased plaintiff that after Ex.A.2-settlement deed, remaining extent, namely, 5495 square feet, retained by Govindammal and she died intestate in the year 1991. Therefore, all the legal heirs are equally entitled. Whereas, it is the contention of the fourth defendant that the property though purchased in the name of the mother, the entire sale consideration has been paid by the fourth defendant, who was serving as Doctor in various places including Army. It is also relevant to note that the other legal heirs of Govindammal, namely the other defendants, have supported the case of the fourth defendant. They not only adopted the written statement filed by the fourth defendant but also filed a memo admitting that the suit property absolutely belongs to the fourth defendant. They never questioned or raised any doubt with regard to the Will-Ex.B.3. The plaintiffs alone disputed the Will, that too, only in the trial stage. In the plaint, absolutely, there is no whisper whatsoever made about the Will - Ex.B.3. The entire plaint proceeded as if his mother died on 06.09.1991 intestate. This observation is relevant to assess the conduct of the parties in this case. Ex.B.3 is the Will propounded by the fourth defendant in respect of the suit property. Ex.B.3 is a registered Will. On careful perusal of Ex.B.3, the deceased plaintiff-Ramadoss himself signed as one of the attesting witnesses, i.e., the second attesting witness. Thereafter, the same has been scored out. Thereafter, another attesting witness Veeraiyan has signed as attesting witness and the Will has been registered on 29.05.1989. The above conduct of the deceased plaintiff signing the document accompanying his mother to the Registrar's Office on the date and signing as attesting witness, thereafter, scored his name and in his place, the other attesting witness has signed the Will makes it clear that the deceased plaintiff was very much aware of the execution



of the Will by the mother on 29.05.1989 itself. Having known the fact that his mother has executed a Will in his presence, the conduct of the deceased plaintiff feigning ignorance in the pleadings about the Will, assumes significance. This is relevant because the mother died in the year 1991. The suit has been filed in the year 2006 i.e., after 15 years. This fact also cannot be ignored altogether. Now, in the above background, it has to be seen whether the propounder of the Will has discharged his onus in proving the Will, as required under law.

7. It is well settled that not only the execution of the Will but attestation also to be proved as required under Section 63(c) of the Indian Succession Act. In the judgment reported in **2008(15) SCC 365 [Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria]**, cited *supra*, the Hon'ble Apex Court has held that when it is not proved that both the attesting witnesses had either attested the Will in the presence of each other or that the testator had acknowledged his signature in the presence of the other attesting witness, the Will is not legally proved.

8. In **K.Laxmanan v. Thekkayil Padmini [2008(6) CTC 92]**, the Hon'ble Apex Court reiterated that the onus of proving the Will lies on the propounder not only execution but also genuineness of the Will and the absence of suspicious circumstances has also to be proved.

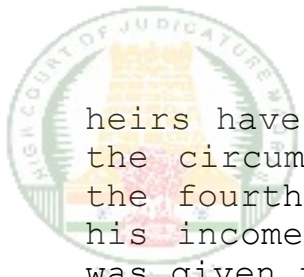
9. In **Rayakkal (Deceased) v. N.Ramasamy [2018(2) MLJ 42]**, this Court has held that the defendants have not placed any acceptable or reliable evidence to eliminate and dispel suspicious circumstances surrounding document.

10. Now, in the light of the above settled position of law, if the evidence available on record is analysed, D.W.3-one of the attesting witnesses, was examined to prove the execution of the Will by Govindammal. D.W.3, in his evidence, has clearly spoken that the deceased plaintiff has accompanied the testatrix to the Registrar's office to prepare the Will and the draft was prepared by his father and explained to Govindammal. She understood and thereafter, Will was prepared. In the Will, Govindammal signed in his presence and D.W.3 also signed as one of the attesting witnesses and the deceased plaintiff also signed as one of the attesting witnesses. He has also in his evidence stated that the said Govindammal has seen D.W.3's signature as witness and D.W.3 also has seen her and his evidence further shows that the deceased plaintiff has never made any objection at the time of signing the document. In the document, he has scored out his signature. In his elaborate cross-examination, he withstood his stand and also affirmed that only at the instructions of Govindammal, he signed as attesting witness and his evidence, if read in its entirety, clearly indicated that apart from D.W.3 and the deceased



plaintiff, other attesting witnesses were also present, They have also signed. Therefore, the evidence of D.W.3, when carefully seen, it is proved not only the execution but also attestation as required under law. Merely because the witnesses have not spoken in verbatim about the execution and attestation, it cannot be concluded that such witness has not spoken about the attestation and the requirement of law has not been complied. Witnesses evidence has to be seen in entirety. On perusal of the entire evidence, this Court is of the view that both the execution and the attestation have been satisfied in this case.

11. It is also to be noted that there is a specific evidence of D.W.3 that the deceased plaintiff has signed as one of the attesting witnesses, which is not denied in the cross-examination. The only suggestion was made to the witness to the effect that since the Will was written against the wishes of Govindammal, the deceased plaintiff has scored out his signature, except that, no suspicious circumstances whatsoever brought on record in the cross-examination of D.W.3. The evidence of D.W.3 clearly proves one fact affirmatively, i.e., the presence of the deceased plaintiff himself and signing as one of the attesting witnesses, subsequently, he has scored out his signature. It is to be noted that having signed as attesting witness and suddenly taking 'U' turn by scoring out his signature, it seems that the execution of the Will was exclusively within the knowledge of the deceased plaintiff. He has to explain as to why he has taken such 'U' turn, having signed as attesting witness in the Will. When the facts are exclusively within the knowledge of the person, the burden lies on him to explain the circumstances under which he has retracted later. The deceased plaintiff remained silent in this aspect. It is also relevant to note that even in the chief-examination, he is feigning ignorance of the Will. In the cross-examination, he has gone to the extent of saying that he does not know the particulars contained in the written statement. He did not even make any enquiry with his lawyer. It is specifically admitted by him in the cross-examination that he has signed the Will written by his mother and thereafter, he scored it in the Registrar's Office. Therefore, these facts clearly prove the fact that he was also very much aware of the Will executed by his mother on 29.05.1989 itself. Having known this fact and feigning ignorance of the Will clearly show that he has not come to the Court with clean hands. The conduct of the other legal heirs is also relevant. Except the deceased plaintiff, none has raised any issue with regard to the Will written by the mother. In fact, all admitted that the Will was true. The conduct of the deceased plaintiff signing the document executed by his mother and thereafter, scoring out his signature in the Registrar's Office also shows that the Will, in fact, has been executed with a knowledge of every family members. Of course, all other legal



heirs have been disinherited in the Will. Though it may be one of the circumstances to doubt the Will, it is the specific case of the fourth defendant that the property was purchased only out of his income in the mother's name. Therefore, the entire property was given to the fourth defendant.

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12. It is also relevant to note that under Ex.A.2-certain extent was already settled in favour of the fourth defendant. The mother of the fourth defendant has clearly stated in Ex.A.2 to the effect that the suit property was purchased only out of the income of the fourth defendant. When the executor herself has admitted in the document as to the nature of the purchase, thereafter, making the arrangements to bequeath the property to the person who has contributed the money for purchase, is quite normal in the family. That may be one of the reasons for disinheriting the other legal heirs. The conduct of the other legal heirs of Govindammal in not raising any issue with regard to the Will also probabilsed the fourth defendant's case. Besides, the conduct of the deceased plaintiff accompanying his mother to the Registrar's Office and stood as one of the attesting witnesses and suddenly took 'U' turn also probabilsed the case of the fourth defendant that the property was purchased out of his own income in the name of his mother, which has been further fortified by the settlement of Govindammal under Ex.A.2. All these facts coupled with the evidence of D.W.3, one of the attesting witnesses, who has not only spoken about the execution of the document by Govindammal but also attestation required under law and his evidence shows that other witnesses also were present at the time of execution of the document. It is also to be noted that on perusal of records, there are no circumstances said to be the suspicious circumstances surrounding the Will exist. Even the deceased plaintiff has not explained as to why he has signed and why he withdrew from attesting witness. All these facts clearly show that the Will has been validly executed by the mother and proved in the manner known to law.

13. Merely because a specific issue has not been framed by the Trial Court, it cannot be said that the entire judgment is totally erroneous. In fact, the Trial Court has discussed the evidence of P.W.1 and D.W.1 to D.W.3 and discussed the Will and found that the Will has been validly executed and it is not the case of the plaintiffs that Govindammal was not in sound state of mind or not in a position to take a rational decision at the relevant point of time. No evidence whatsoever available to contend that the Will is shrouded with suspicious circumstances. Accordingly, the points are answered against the appellants.

14. In view of the foregoing reasons, this Court does not find any illegality or infirmity in the judgment of the Trial



Court warranting interference at the hands of this Court. Thus, the appeal fails and accordingly, the same stands dismissed. No costs.

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Assistant Registrar (CS-I)

/ /2020

Sub Assistant Registrar(CS)

SML

To

The Additional District Court
(Fast Track Court No.I),
Thanjavur.

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The Record Keeper,-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.BAALASUNDARAM, Advocate (SR-584[F] dated 07/01/2020)

+1 CC to Mr.MA.KARUNANITHI, Advocate (SR-443[F] dated 07/01/2020)

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Judgment made in
A.S. (MD)No.260 of 2008
07.01.2020

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