

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.04.2021	Delivered on 17.04.2021
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

T.O.S.No.3 of 2016

P.Chandrasekar Rao

..Petitioner/Plaintiff

vs.

1. B.V.Balasubramaniam

2. Pramila Sekhar

3. Malini Ganesh

4. B.Rajkumar

... Respondents/Defendants

Prayer : Plaint filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 for the grant of letters of Administration.

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For Plaintiff : Mr.Bijesh Thomas
for M/s.K.F.Manavalan

For Defendants : Mr.L.J.Krishnamurthy

J U D G M E N T

The plaintiff seeks issuance of letters of administration with the will annexed for the last will and testament of late P.Vasudeva Rao the father of the plaintiff dated 24-08-1977. The plaintiff filed a petition in O.P.No: 55 of 1997 seeking the aforesaid relief. The defendants who are the heirs of the sister of the plaintiff opposed the grant by filing a Caveat. Hence the original petition was converted into a Testamentary Original Suit and numbered as above.

2. According to the plaintiff his father late P.Vasudeva Rao died on 17-11- 1977 at Chennai leaving behind his wife Leelavathy, the plaintiff herein and a daughter Vimala. It is also claimed that the daughter died on 26-04-1979 leaving behind her, the defendants herein as her legal

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representatives. It is claimed by the plaintiff that his father had executed a will on 24-08-1977 bequeathing his properties both movable and immovable as well as the business run by him to the plaintiff. The said will was registered with the office of the Sub- Registrar, Chennai North on 26-8-1977. The plaintiff had also filed the affidavit of one P.Vinoth Kumar son of one of the attesting witnesses to the will. The said attesting witness namely Mr.P.Krishna Rao happens to be the brother of testator.

3. This application for grant of letters of administration was resisted by the defendants contending that the will is not true and genuine. It was further claimed that the application itself is barred by limitation in as much as it has been filed after three years from the date of death of the testator. The defendants would also contend that the testator was hospitalised prior to his death on 17-11-1977 and that he was not in a sound disposing state of mind. It was also claimed that the plaintiff who was residing outside Chennai had in fact requested the first defendant to find a suitable buyer for the property so that the property could be sold and the sale consideration

could be shared equally between the defendants and the plaintiff. It was the further contention of the defendants that the plaintiff's mother has been living with them and the defendants 2 to 4 were raised by their grandmother. The strained relationship between the mother and son was also highlighted by the defendants to contend that the will is not true. The defendants also denied the execution of the letter dated 4-5-1978 by Vimala addressed to the Chennai Corporation consenting for transfer of property tax registry in the name of the plaintiff. Certain letter correspondence between the plaintiff and the first defendant as well as between the plaintiff's mother and the first defendant were relied upon to show that the relationship was strained and the mother of the plaintiff had always expressed her willingness to live with the defendants.

4. On the above pleadings the following issues were framed for trial.

1. Whether the last will and testament dated 24-08-1977 executed by P.Vasudeva Rao is in accordance with law?

2. To what relief the plaintiff is entitled to?

5. At trial, the plaintiff examined himself as PW 1 and the son of one of the attesting witnesses was examined as PW 2. Exhibits P1 to P13 were marked. On the side of the defendants the first defendant was examined as DW 1 and the fourth the defendant was examined as DW 2. Exhibits D1 to D3 were marked in cross examination of the Plaintiff on 20-08-2019. Overlooking the same the exhibits that were marked through DW1 were also marked as Exhibits D1 to D7 on 02-01-2020. Hence Exhibits D1 to D3 marked on 02-01-2020 are renumbered as Exhibits D1(a), D1(b) and D1(c). The questions that are to be decided is as to whether the plaintiff has proved the execution of the will by the testator as required under section 68 or 69 of the Evidence Act and whether there are any suspicious circumstances surrounding the execution of the will.

6. Heard Mr.Brijesh Thomas for the plaintiff and

Mr.L.J.Krishnamurthy for the defendants.

7. In support of his case the plaintiff has examined PW 2 who happens to be the son of the attesting witness, since both to the attesting witnesses to the will had died. PW 2 has identified the signature of the testator and that of one of the attesting witnesses. It should be pointed out at this juncture that PW 2 is also the brother's son of the testator. It is not in dispute that one of the attestors to the will is the brother of the testator. Though PW 2 has been cross-examined extensively nothing has been brought about, in the said cross-examination, that would render his evidence unreliable. Apart from identifying the signatures of the testator and the attesting witness PW 2 has also produced exhibit P7 which is the original receipt for discharge of a mortgage dated 24-8-1974. The said document has been produced to prove the signature of late P. Krishna Rao, the attestor to the will. Apart from the evidence of PW 2 the plaintiff has also produced the consent affidavit of his mother P. Leelavathy dated 24-9-1995 wherein she had specifically acknowledged the execution of the will by the testator. It

will also be pertinent to point out that the first defendant as DW 1 has admitted the signature of his mother-in-law in the said affidavit marked as Ex.P3.

8. Mr.L.J. Krishnamurthy learned counsel appearing for the defendants would, however, vehemently contend that the letter correspondence that has been produced would show that the relationship between the mother and the son was not quite cordial and therefore the consent affidavit filed by the mother cannot be taken at its face value. He would also point out that the will which has been marked as Exhibit P2 has been presented for registration on 25-08-1977 and it has been registered on 26-08-1977. According to him the delay in registration of the will would make it suspicious. The learned counsel would further submit that the conduct of the plaintiff in requesting the defendant to look for the purchaser for the property would show that the will is not true and genuine. Even though some letters written by the plaintiff to the first defendant have been produced there is a reference to the will in only 2 of them marked as

Exhibits D2 and D3 in cross examination of the plaintiff. In both the letters the plaintiff has stressed the need for the defendants' consent for grant of Probate (sic). He has further assured that he would not sell the property without the knowledge of the first defendant. I am unable to accept the said submission of the learned counsel for the defendants. The fact that the will is a registered instrument should also be borne in mind. Section 60 (2) of the Registration Act creates a presumption that the facts mentioned in the endorsements made by the registering officer had occurred as mentioned therein. Therefore the burden is on the defendants to rebut the statutory presumption attached to a registered instrument. Neither the evidence of the first defendant as DW 1 nor the evidence of the fourth the defendant as DW 2 have the effect of dislodging the presumption created by operation of sub-section 2 of section 60 of the Registration Act.

9. As already pointed out PW 2 son of the attesting witness has identified the signatures of the testator and one of the attesting witnesses in will. The very same witnesses also figure as identifying witnesses before the

Sub- Registrar. I do not find any reason to discard the evidence of the son of the attesting witness namely PW 2. No motive has been ascribed to Late.P.Krishna Rao to have aided the creation of the will by the plaintiff. I therefore find that the plaintiff has established the execution of the will by the testator as required under Section 69 of the Evidence Act.

10. Now that the execution of the will has been found to be true it is for the defendants to prove that there are certain suspicious circumstances attending the same. The defendants would rely upon certain letter correspondence between the wife of the testator and her daughter Vimala as well as between the first defendant and his mother-in-law. Those letters have been marked as exhibits D5 series. Some of the letters are prior to the execution of the will and some of them are after the execution of the will. I have gone through all the letters. I do not find any reference to the will in any of the letters. In fact the postcard dated 17-11-1978 and the Inland letter dated 25-10-1978 would show that the relationship was quite normal and there was no sign of any strain in the family. It is also seen that the mother

Leelavathy was alive till 2012 and she did not choose to withdraw the consent affidavit namely exhibit P 3 that was filed by her in 1995. This fact in my considered opinion would weigh very much against the defence since it is the claim of the defendants that the widow was living with the defendants as the son namely the plaintiff did not take care of her. Of course in some of the letters there is a reference to certain financial transactions but I do not think that the same will in any manner affect the validity of the will. In fact in the letter dated 25-7-1978 which forms part of exhibit D5 series there is a reference to a recommendation made by the mother to pay a sum of Rs.15,000 to the daughter and the letter further reads that the son has not responded to the same. There are bound to be certain differences or pinpricks in the relationship between a mother and son, they cannot be taken as evidence strong enough to disprove the execution of the will by the father.

11. Adverting to the question of limitation the same is covered by a decision of the Division Bench of this court in *S.Vatsala -Vs- KS Mohan and others*, reported in *2016 (1) CTC 257*, wherein it has been held that the

law of limitation will not apply to sections 232 and 278 of the Indian succession act in respect of proceedings initiated before this court under the Original Side Rules. In view of the above categorical pronouncement of the Division Bench I do not think that the contention of the learned counsel for the defendants to the effect that the petition is barred by limitation could be accepted. For the foregoing reasons the sole issue framed is answered in favour of the plaintiff and the Testamentary Original Suit will stand decreed granting letters of administration with a copy of the will annexed in favour of the plaintiff. The plaintiff shall execute a bond for a sum of Rs.25,000/-. Considering the relationship between the parties I make no order as to costs.

17.04.2021

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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List of the Witnesses examined on the side of the Plaintiff :

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1. P.W.1 P.Chandrasekara Rao (Plaintiff)
2. P.W.2 P.Vinothkumar

List of Exhibits marked on the side of the Plaintiff :

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.P1	Late P.Vasudeva Rao's Death Certificate dated 09/02/2015 [reg.no.COC/97/HQ/097/000132/0 issued by Corporation of Chennai];
2	Ex.P2	Late P.Vasudeva Rao's Last Will & Testament dated 24/08/1977 (registered as Doc.No.137 of 1977 on the file of Sub-Registrar, Madras – North);
3	Ex.P3	Consent Affidavit of Testator's Wife, late P.Leelavathi' dated 24.09.1995;
4	Ex.P4	Copy of letter dated 04/05/1978 from P.Vimala to the Corporation of Chennai;
5	Ex.P5	Late P.Leelavathi's death certificate issued by the Corporation of Chennai dated 08/06/2012;
6	Ex.P6	Late P.Leelavathi's Legal Heirship Certificate dated 13/11/2013 issued by the Tahsildar, Mylapore-Triplicane;
7	Ex.P7	Mortgage Deed Receipt dated 24.08.1974 containing the signature of late P.Krishna Rao (attestor of the Will);
8	Ex.P8	Sale deed dated 16/06/1965 that contains the signature of late P.Vasudeva Roa (Testator) and late P.Krishna Rao (Attestor) – Originals were compared for Ex.Nos.7 & 8;

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
9	Ex.P9	Advertisement effected in the Newspaper;
10	Ex.P10	Affidavit of Assets;
11	Ex.P11	PW2 identification of the signature at the foot of Pg.3 of Ex-P2 Will of his father, P.Krishna Rao (One of the Attestors to Ex.P-2 Will);
12	Ex.P12	PW2 identification of the signature on the reverse of Pg.1 of Ex.P2 as that of his father, P.Krishna Rao (One of the Attestors to Ex.P-2 Will);
13	Ex.P13	P.W.2 identified Ex.P-7 (Mortgage Deed) and the signature on the reverse of Pg.1 of Ex.P7 as that of father, P.Krishna Rao (One of the Attestors to Ex.P-2 Will)

List of the Witnesses examined on the side of the Defendants:

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|---|-------|---|
| 1 | D.W.1 | B.V.Balasubramaniam (1 st defendant) |
| 2 | D.W.2 | B.Rajkumar (4 th defendant) |

List of Exhibits marked on the side of the Defendants:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Letter from Plaintiff to 1 st defendant.	02-10-1969
2	Ex.D2	Letter from Plaintiff to 1 st defendant.	27-08-2001
3	Ex.D3	Letter from Plaintiff to 1 st defendant.	17-06-2001
	Ex.D1(a) series	Letters from Leelavathi to Vimala (wife of 1 st defendant).	

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
	Ex.D2(a) series	Letters from plaintiff to his mother.	
	Ex.D3(a) series	Letters from plaintiff's mother and plaintiff to 1 st defendant.	
4	Ex.D4 series	Medical Bills.	
5	Ex.D5	Letter by Leelavathi to Vimala.	16-03-1974
6	Ex.D6 series	Photographs.	
7	Ex.D7	Plaint in O.S.No:6987 of 2019 City Civil Court, Chennai.	07-09-2019

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17.04.2021

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

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TOS No.3 of 2016

R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment

T.O.S. No.3 of 2016

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