



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.380 of 2017

and

C.M.P.Nos.14282, 15954 and 15955 of 2017

R. Ananthi

...Appellant/Defendant

Vs.

Shanthakumari

...Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure against the Judgment and Decree dated 17.09.2014 passed in O.S.No.38 of 2012 by the learned Principal District Judge, Chengalpattu.

For Appellant : Mr.V.Ramamurthy
For Respondent : Mr.Udayakumar

JUDGMENT

The unsuccessful respondent in a Probate proceedings is the appellant before this Court. The proceedings were originally filed as Probate O.P.No.56 of 2007 and thereafter on the respondent contesting the Will the same had been converted into a Original Suit and numbered as O.S.No.38 of 2012 by the learned Principal District Judge, Chengalpattu. The parties are referred to in the same array as in the Testamentary Suit.

2.It is necessary to allude to the facts which have given rise to this First Appeal as follows:

PETITIONER'S CASE:

The plaintiff and one N.Sathiyamurthy are siblings. N.Sathiyamurthy was residing at Maraimalainagar where he passed away on 24.11.2006. His father had pre-deceased him on 03.03.1970 and his mother died on 05.12.1993. The petitioner is the elder sister of the said N.Sathiyamurthy. On 05.11.2006, the said Sathiyamurthy had executed a Will in a sound disposing



state of mind bequeathing his properties both movable and immovable in favour of his sister, the plaintiff herein. The plaintiff would submit that though the defendant who was married to the said Sathiyamurthy had separated from him there was no dissolution of marriage. However, they had executed a mutual separation deed on 13.07.2002 and from the said date, the defendant has not been living with the said Sathiyamurthy. The said Sathiyamurthy had narrated these facts in his last Will and testament as the reason for not including the respondent in the bequest. Therefore, the proceedings for probate was filed by the plaintiff which was later converted as a suit.

3. On receiving summons in the above suit O.S.No.38 of 2012 from the learned Principal District Judge, Chengalpattu, the defendant had filed a counter inter alia contending that the Will was fabricated at the behest of the petitioner. The testator was always under the influence of alcohol and also a vagabond and these were the reasons as to why the respondent has to leave her matrimonial home. However, the marriage between the two had not been dissolved in the manner known to Law. She had denied the Agreement dated 13.07.2002 and would state that even if such a document is available the same does not bring to an end the matrimonial relationship between the deceased testator and herself. She would submit that the Will has been executed in suspicious circumstances with the defendant alleging that the beneficiaries had taken an active role in its execution. She would therefore submit that the Will cannot be given effect to and therefore sought to have the suit be dismissed.

4. The defendant has also filed an additional counter in which she would submit that she was constrained to file an additional counter and she was depressed and shocked due to the sudden demise of her husband on 24.11.2006. In the additional counter, she would submit that the dissolution of marriage Agreement dated 13.07.2002 is void ab initio the marriage between herself and her husband had been solemnised as per the Hindu Rites and Customs and therefore, its dissolution can also be only under the provisions of the Hindu Law and cannot be by way of an Agreement between the parties which does not have the stamp of approval of a Court of Law. The respondent had once again reiterated the suspicious circumstances since the testator had died within a short time after the execution of the Will.

5. The learned Principal District Judge had framed the following issues:



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- (1) Whether the Will dated 05.11.2006 is a true one and valid in Law?
- (2) Whether the letter of probate has to be granted as prayed for by the plaintiff?
- (3) The plaintiff is entitled to what relief?

6. The plaintiff has examined herself as PW1 and has also examined the attesting witness and others as PW2 to PW4 and had marked Ex.P.1 to Ex.P.6. On the side of the defendant, the defendant had examined herself as RW1 and her niece as RW2. She had marked Ex.R.1 and Ex.R.2 to highlight the manipulation by the plaintiff.

7. On considering the evidence both oral and documentary on record, the learned Judge came to the conclusion that the plaintiff had proved the execution of the Will in the manner known to Law and the defendant who had questioned the Will on the ground of suspicious circumstances has failed to prove the same. Challenging the said Judgment and Decree, the respondent has filed this Appeal.

8. On hearing the submissions of both the Counsels, the following Point arises for consideration in the above First Appeal:

“(1) Whether the petitioner has proved the execution of the Ex.P.1 - Will in the manner known to Law and the same has been executed by the deceased testator in a sound disposing state of mind?

(2) Whether there exists suspicious circumstances in the execution of Ex.P.1 - Will?”

9. Mr. V. Ramamurthy, learned counsel appearing on behalf of the plaintiff would strenuously contend that the execution of the Will Ex.B.1 was shrouded in suspicious circumstances for the following reasons:

(a) The marriage between the respondent and the deceased testator had not been dissolved in the manner known to Law.

(b) The Will had been executed on 05.11.2006 and the testator had died on 24.11.2006 within a period of 11 days from the date of execution of the Will. This coupled with the facts that in the Will, the deceased testator had stated about his ill-health would definitely create room for suspicion.

(c) The petitioner had manipulated the Voters ID by claiming herself to be the wife of the deceased testator and one Cheralathan as his son.



(d) The deceased testator was in the habit of signing in English language whereas the Will has been signed in Vernacular.

10. This would clearly go a long way to support the case of the plaintiff that Ex.P.1 - Will is the product of the manipulation of the plaintiff herein. He would also rely on the following Judgments in support of his case that once the suspicious circumstances have been pleaded the onus lies on the propounder of the Will to disprove these suspicious circumstances:

(1) (2008) 7 MLJ 238 (Mary and Others v. Adaikkalasamy and others) at Para 18

(2) (2004) 7 SCC 107 [Dayamathi Bai Vs. K.M. Shaffi] at Paras 13 to 15.

11. Per contra, Mr.S. Udayakumar, learned counsel appearing on behalf of the plaintiff would submit that the Ex.P.1 - Will has been proved by examining the attesting witnesses. The learned counsel would further contend that the defendant had not been able to rebut the evidence of the attesting witness PW2- Thiru.Manoharan. The said witness has clearly deposed about the execution of the Will by the deceased testator and the fact that he had seen the testator's sign and the testator had also seen the two witnesses attesting the Will. He has also deposed that the deceased testator was in a sound disposing state of mind when he had executed the Will.

12. The learned counsel would also contend that the plaintiff had proved the Agreement dated 13.07.2002 executed by the respondent and the deceased testator which brought to an end the matrimonial relationship between them and by which they had decided to part ways by examining PW3, one of the witnesses to the document Ex.P.4. He would therefore submit that the Judgment of the learned District Judge does not require a re-consideration and the appeal therefore is liable to be dismissed.

13. Heard the counsels and perused the records.

14. It is a well settled proposition that it is the propounder of the Will who has to prove the due execution of the Will and the fact that the person executing the testamentary disposition was in a sound disposing state of mind when he had affixed his signature to the said Will. In order to appreciate the same, the following provisions have to be considered:



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"Section 68 in The Indian Evidence Act:

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

Section 63(c) of the Indian Succession Act:

Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 12 [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."



15. Let us now examine if the Will Ex.P.1 has been proved as per the above dicta. The plaintiff has examined PW2 who is the attesting witness of Ex.P.1, he has clearly deposed to the fact that he had affixed his signature as an attesting witness followed by one Rajkumar. In his cross examination, he has been in a position to show his close relationship with the deceased testator. The defendant has not been able to elicit any admission by the witness to disprove the contention of the witness that the deceased testator had executed the Will in a sound disposing state of mind and fully understanding the contents thereof. Therefore, the plaintiff had successfully proved the execution of the Will and the fact that the testator was in a sound disposing state of mind. Therefore, the first Point for Consideration is held in favour of the plaintiff.

16. The defendant who has come forward with the contentions that the execution of the Will is shrouded in suspicious circumstances attempts to prove the active involvement and the manipulation by the petitioner by marking Ex.R.1 and Ex.R.2 through RW2. The marking of all these documents were objected to and they were marked subject to objections as they are not certified copies issued by the Authorities. To consider the same, the document does not contain any official seal to show that it is an authenticated document which has been procured from the Authorities concerned, which in the instant case is the Tamil Nadu Civil Supplies Corporation Limited. Except for contending that the Will has been executed in suspicious circumstances, the respondent has not been able to prove the fact that (a) the deceased testator was not in a sound disposing state of mind and (b) he was suffering from health condition/mental condition which made it impossible for him to execute a Will comprehending its contents as well as its purport. When Ex.P.1 - Will is read as a whole the testator has given cogent reasons as to why he had excluded the defendant and executed the Will in favour of his sister. He has spoken about his separation from the respondent and the fact that they have not reunited. Therefore, it is clearly evident that the deceased testator has decided to bequeath his property both movable and immovable in favour of his sister and in order to avoid any future litigation he had decided to execute Ex.P.1 - Will. In the light of the above, the defendant having failed to prove her case about suspicious circumstances and that the testator was not in a sound disposing state of mind, the 2nd Point for Consideration is answered against the respondent.



As a result of the above, this Appeal Suit is dismissed. The Judgment and Decree of the learned Principal District Judge, Chengalpattu, is confirmed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps
To

The Principal District Judge,
Chengalpattu.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Udayakumar, Advocate sr 49570.

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VBM(CO)
SP(30/12/2021)