



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.863 of 2017

A.Shajahan

.. Appellant/Petitioner

Vs.

1. The Secretary,
Narasingapuram Primary Agricultural
Co-operative Bank Ltd., No.6608,
Narisingapuram -636 108.
Attur Taluk, Salem District.

2. Mehataj

3. Dilshath

.. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 384 (1) of the Indian Succession Act, 1925, appeal against the order dated 16.09.2015 made in S.O.P.No.253 of 2008 on the file of the I Additional District Court, Salem.

For Appellant : Mr.T.Murugamanikkam, SR.C

For Respondents

For R1 : Mr.Babu Ranfasamy Associates

For R2 : Mr.M.R.Vivekanathan, RR2

For R3 : Mr.S.T.Bharath Gowtham

J U D G M E N T

The appellant herein is the petitioner in S.O.P.No.253 of 2008 filed by her under Section 372 of the Indian Succession Act 1925 to issue a Succession Certificate in order to withdraw the amount from the 1st respondent / Bank as per the Will dated 02.09.2005.

2. The Bank as well as the another beneficiaries of the Will/ respondents 2 & 3 contested the said petition.

3. On hearing both sides the trial Judge dismissed the petition in S.O.P.No.253 of 2008 dated 16.09.2015 on the file of the I Additional District Court, Salem. Aggrieved by the order the appellant / petitioner has preferred this Appeal.



"whether the trial Judge was right in dismissing the appellant's claim by concluding that Will is not proved without ignoring the fact that the beneficiaries of the Will / R2, another beneficiary admitted the Will?"

6. The 1st respondent / bank raised formal objections. The 2nd respondent who is one of the beneficiaries of the Will also not disputed the Will. The 3rd respondent who is another sister of the appellant submitted formal objection because she was not given any share in that Will.

"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:

<https://hcservices.ecourts.gov.in/hcservices/>



8. But on seeing the findings of the Trial Judge he observed that as per the evidence of the 2nd respondent / R.W.1 there is a suspicious circumstances in the Will, but he failed to observe the fact that the R.W.1 admits the Will while filing his counter statement. In his Counter statement he stated as follows:

" 3.Contents of para 1 of the petition regarding the inheritance by virtue of the Will dated 02.09.2005 are not disputed. It is also true that the testatrix Rabia Basri expired on 08.10.2005."

9. Thus R.W.1 also admits the execution of the Will. Admission is the best evidence which require no further proof. The appellant in order to prove the Will, examined one of the attestors which is sufficient. The another respondent / 3rd respondent who raised formal objections about the Will not adduced any witness to support his contention.

10. But the trial Judge without appreciating all these facts erroneously dismissed the petition. Therefore the findings given by the trial Judge is set aside. Accordingly, S.O.P.No.235 of 2008 is allowed and succession certificate is issued to the appellant to withdraw the amount as per the Will dated 02.09.2005.

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the order passed by the learned No.I Additional District Judge, Salem in S.O.P.No.253 of 2008, dated 16.09.2015 is set aside. No costs.

12. Appellant is permitted to withdraw the amount mentioned in the petition schedule with accrue d interest from the 1st respondent's bank.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rri

To

I Additional District Judge,
Salem.

+1cc to Mr.M.R.Vivekanathan, Advocate, S.R.No.21996
+1cc to Mr.Supraja, Advocate, S.R.No.21831
+1cc to Mr.Zeenath Begam, Advocate, S.R.No.21336

C.M.A.No.863 of 2017

RSI (CO)
HS(29/07/2021)