



T.O.S.No.24 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.02.2022

Judgment Pronounced on : 24.08.2022

CORAM : JUSTICE N. SESHASAYEE

T.O.S.No.24 of 2008

K.S.Varadharajan

.... Petitioner / Plaintiff

Vs

S.K.Venkatesan

.... Caveator / Defendant

Prayer : Petition filed under Section 222 & 276 of the Indian Succession Act, 1925 read with Order XXV Rule 4 of the Original Side Rules, praying that he may be allowed to prove the Will in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to the petitioner and to pass such or other orders as may deem fit and necessary in the circumstances of the case.

For Plaintiff : Mr.S.Rajendra Kumar
for Mr.G.Ethirajulu

For Defendant : Ms.Vedavallikumar

JUDGMENT

This testamentary suit is laid seeking probate of the last Will and testament of late Dr. S.K.Srinivasan.



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2.1 Dr. S.K.Srinivasan was formerly a faculty in I.I.T., Madras. On 22-11-2000, he executed his last Will and testament as concerning one item of his immovable property and several investments. It is an unregistered Will. He later died on 21-10-2006 leaving behind him surviving his widow Vijayalakshmi, and four sons viz., Ramanujan, Venkatesan (sole defendant), Sridhar and Sudharsanam. Plaintiff is testator's nephew.

2.2 Under his Will, the testator had bequeathed $\frac{2}{3}$ share of his properties to one of his sons Ramanujan, and the balance $\frac{1}{3}$ to the plaintiff. Both these legatees were also nominated as the Executors under the Will. The testator's estate included one residential building and several investments all of whose value as on the date of testator's demise was estimated at Rs. 51,89,602.35.

2.3 After the demise of the testator, the plaintiff who is one of the legatees and the Executors under the Will, instituted O.P.726 of 2007 for grant of probate. Only the defendant herein (2nd son of testator) entered caveat following which O.P.726 of 2007 was converted into the present suit. His other heirs have given their affidavits in support of probating the Will.



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3. In his written statement, the defendant has pleaded:

- The Will in question is not admitted. The plaintiff is in the habit of forging the testator's signature, and also is given to manipulating records to suit his needs. The Will indeed is a forged one.
- The testator was unwell and was not in a sound state of mental disposition at about the time when the Will was alleged to have been executed. Between 1995 and 2007, the plaintiff along with his mother (sister of the testator) were in charge of cooking, and subjected the testator and his own sisters to slow poisoning. Once the testator became aware of this, he shifted his residence to the first floor of his house and arranged the cooking for him independently.
- The testator had made several investments such as with ICICI Bank, JM Financial Mutual Funds, Standard Chartered Mutual Fund, UTI, Magum Midcap Fund, LIC Mutual Fund, Franklin Templeton Investments, and Reliance Mutual Funds. In all these, the testator has named this defendant as his nominee.
- In the case of investment made by the testator in M/s.Anubhav Plantations Ltd., the plaintiff had forged the testator's signature and taken the cheque issued by the said company. This defendant took up issue



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with the administrators of Anubhav Plantations.

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- The plaintiff is engaging in criminal activities and is trying to misappropriate the legitimate amounts due to the defendant. He is squatting on the property and is creating nuisance to the occupants of the first floor, who are his own sisters.
- When according to the plaintiff, the testator had named both the legatees as his Executors, a suit at the instance of one of such Executors is not maintainable. And, mere giving of consent affidavit for grant of probate will not cure the procedural defect in instituting the suit.
- There are litigations in O.S.3556 of 2011 filed against the plaintiff before the City Civil Court by his own sisters, in which the plaintiff was restrained by an interim order of injunction from interfering with the possession of the plaintiffs in that suit. This apart there is another case in M.C.15 of 2011 before the XXII MM Court, Saidapet.

In support of his contentions, the learned counsel for the defendant relied on the judgments of the Hon'ble Supreme Court in *H.Venkatachala v. B.N.Thimmajamma* [1959 AIR SC 443]; *Rani Purnima Devi and Another v.*



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Kumar Khagendra Narayan Dev and Another [1962 AIR SC 567];
Ramchandra v.Champabai [AIR 1965 SC 354]; **Joseph Antony Lazarus (Dead) By Lrs vs. A.J.Francis** [(2006) 9 SCC 515]; **Bharpur Singh & Ors vs.Shamsher Singh** [(2009) 3 SCC 687]; **S.P.Chengalvaraya Naidu vs. Jagannath** [(1994) 1 SCC 1] and the judgment rendered by High Court of Mysore in **Ramaswamy v. Lakshminarasimhan** [AIR 1965 Mysore 87] and by this Court on 23.02.19656 in **In Re: James Noel Anthony Hobbs Vs. Unknown** [AIR 1957 Mad 613].

3.1 On the above pleadings the following issues are framed:

- (1) *Whether the Will dated 22.11.2000 is genuine?*
- (2) *Relief and cost.*

3.2 During trial, the plaintiff examined himself as P.W.1. He produced Exts.P-1 to Ext.P-10, of which Ext.P-2 is the Will in question. He also examined both the attestors to the Will as P.W.2 and P.W.3. Turning to the other side, the sole contesting defendant examined himself as D.W.1 and has examined his niece Ms.K.S.Chitra as D.W.2. He produced as many as 61



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documents and they are marked as Exts. D-1 to Ext.D-61.

Issue No:2 – On Maintainability of the suit.

4. The proof requiring to establish the genuineness of Ext.P-2 Will apart, the fact remains that the Will has named both the plaintiff and the defendant as the Executors, and the point of objection to the maintainability of the suit is that only the plaintiff has instituted the suit with his co-legatee cum co-Executor passively participating in the proceeding by lending his consent for grant of probate through the latter's affidavit.

5. The learned counsel for the plaintiff submitted that the suit is maintainable as it is permitted under Sec.311 read with Sec.335 of the Indian Succession Act, 1925. These provisions read:



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Section 311	<i>Powers of several executors or administrators exercisable by one:-</i> <i>When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.</i> <i>Illustrations:</i> <i>One of several executors has power to release a debt due to the deceased.</i> <i>One has power to surrender a lease.</i> <i>One has power to sell the property of the deceased whether movable or immovable.</i> <i>One has power to assent to a legacy</i> <i>One has power to endorse a promissory note payable to the deceased.</i> <i>The Will appoints, A, B,C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.</i>
Section 335	<i>Assent of executor to his own legacy :-</i> <i>(1) When the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may, in like manner, be expressed or implied.</i> <i>(2) Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor or administrator.</i>

In the context of the facts of the present case, Ext.P-2 Will nowhere has stipulated that both the administrators should act jointly and not severally. This



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invites Sec.311 of the Act for its application and enables this Court to uphold the maintainability of the suit.

On Proof of Genuineness of the Will:

6. Ext.P-2 Will is dated 22.11.2000 and is an unregistered Will. Now turning to the approach of the defendant, as outlined he comes out with three alternative defences but couched as one supplementing the other. He challenges the genuineness of the Will on the following grounds:

- (a) That between 1995 and 2007 the testator was slowly poisoned by the plaintiff;
- (b) That the testator was not in his sound state of mental disposition when he executed the Will; and
- (c) the Will is forged as the plaintiff is given to forging the signature of the testator.

But each of these pleas in effect are alternate and inconsistent pleas and they may not operate simultaneously. If the Will is forged, then the mental state of the testator will have no relevance. If however, the mental state of testator is made relevant, then the theory of fabrication of the Will should fail, and the factum of execution of the Will would go as an undisputed fact. The poisoning



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theory is only an adjunct fact to support the physical and mental state of the testator at the time of the execution of the Will.

7.1 This is the setting. Now, to prove the Will, the plaintiff examined both P.W.2 and P.W.3, the attestors to the Will. Both of them were the colleagues of the testator at the I.I.T. Madras. Of them P.W.2 introduces him as a student of the the testator who later became a faculty of the IIT, and he claims that he continued to be the friend of the testator till the latter's death. He claims that on the date of execution of the Ext.P-2 Will, the testator had brought the Will to his room, and the Will was executed in his room and narrates the compliance of the statutory requirements for the making of the Will. He also speaks to the presence of P.W.3 then.

7.2 The only line of cross examination was on certain correction made in the affidavit of chief examination of P.W.2 and this correction pertains to the place of execution of the Will, and the room of the testator was corrected to the room of P.W.2. There is no cross examination to the grounds on which the defendant seeks to impugn and impeach the Will.

7.3 The next witness is P.W.3, who also speaks to the execution of the Will.



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The cross examination of this witness is essentially along innocuous lines and the only information it additionally provides is that the testator had retired prior to the date of execution of the Will.

8. It was not even suggested to any of these attesting witnesses, (a) that the purported signature of the testator in the Will was not his, or that the Will was not executed by him; or (b) that the testator was not in sound state of mental disposition etc. Necessarily this Court does not find any material to shake the conscience of this Court to suspect the genuineness of the Will.

9. Turning to the evidence of DW1, he matched his father's academic excellence, having graduated from the IIT, Madras, and had prosecuted his studies further. In his testimony he states that he believed that the plaintiff and his mother had performed voodoo practices (a combination of sorcery and spirits within the genus of black magic) on his father. Here the nature of cross examination especially the language employed both by the counsel and the witness deserved to be reproduced as it is a rarity to find something such as this:

Q : You do agree that you are a very highly qualified person having a Doctorate degree?



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A: Yes

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Q : But strangely you have stated in Ex.D48 about voodoo practices and you have ascribed the reason for your father's death due to such practices?

A: Yes. Witness adds:- These practices are followed by my cousin brother Varadarajan and his mother. Although my domain of knowledge is in Engineering and Physics, the impact of these practices on patient has not been studied by Western Medicine sufficiently.

Q : So you have ventured to conclude without any empirical data about a para psychological practices despite being a highly qualified person of science?

A: All primitive witch craft are forerunners to science and some of it still remain unexplored.

Q : In Ex.D50 and D51, you are not the party to the suit?

A: I am surprised to see that my name is not there. The plaintiff's sister's name figure.

Moving further to the allegation of slow poisoning, the line of cross examination is worthy of reproduction as they are as below:

Q : Is there any document to show that you have exhibited such concern by alerting them as to the imminent danger?

A: Yes. There is an E-mail communication which I have sent to my father and I have also informed several years back about slow



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poisoning to N.Ram and his wife.

Q : But obviously such e-mail communication has not been exhibited here?

A: Yes. As it is generally believed that these are unscientific allegations and these facts have been overlooked by academicians, that is N.Ram and my father.

Q : So knowing full well about the non-secquitor of these allegations that they are non-secquitor and yet you have chosen to drop them in your written statement?

A: There are circumstantial evidences to substantiate the claim and these facts can be further investigated.

Q : What circumstantial evidences as you claim now have been cited either in your pleading or in your deposition?

A: The medical condition of my father is already crucial evidence available in this case. Apart from this, my cousin sisters have suffered considerable health disorders and I myself also have suffered from chronic disorders.

Q : As a scientist you know that there is nothing called toxin and only its dosage determines its toxicity?

A: Not, not all toxins have potential cut off values and some toxins are known to be clearly carcinogenic.



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Q : Have you established any link between the toxins said to have been administered to your father and the cause of death of your father?

A: As I mentioned earlier the scientific dogma underestimated the capacity for native medicine to do harm.

Q: The answer is laconic, could you please expatitate?

A: Investigations on native medicine (like Kerala folk medicine) have not reached sufficient scrutiny in scientific circles and these medicines and their studies are now becoming more and more acceptable. In any case, science proceeds from evidence to dogma.

Q: Has your father been subjected to any medical examination at your instance to prove the factum of he being administered the alleged poison?

A: No, I mentioned this possibility to both the Doctor and to N.Ram about investigating this as a case for genetic modification leading to cancer using native medicine which may also open up a new subject in science. When Professor David Baltimore a famous Nobel Laureate American Scientist was visiting our office at that time I suggested that this case be investigated for discovering a new carcinogenic agent. However, it was turned down by the dogma of western scienticism a well known antagonism towards native medical knowledge.

Q: But a dogma remains a dogma regardless of evidence?



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A: Dogma is actually massive evidence masquerading contextual exceptions and further development and investigation.

Q: From the above answer you have uttered now, there is nothing concluded because you employ the word masquerading which is something appearing so and there is something inconclusive about the definition dogma?

A: It is the dogma that is causing impediment for collecting evidence and substantiating the allegations.

Q: So the net result is your allegation is unsubstantiated?

A: Yes, but all new research start from such as small beginning.

Moving forward the testimony taken entirely leaves out the allegation of forgery and fabrication of the Will.

10. Turning to the plaintiffs evidence, he has produced P-7 and P-8 to establish that after the execution of the Will, the testator had organised a seminar on and also had written a book, which the contesting defendant admits in his cross examination. This would show that there is nothing to suspect the mental state of the testator when he executed Ext.P-2 Will some three years prior to that.

11. Taking the evidence as has been explained above together, this Court hardly finds anything to suspect the Will. Here it may be mentioned that even the



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defendant admits that between 1995 and 2007, the plaintiff and his mother were cooking food for his father. With his theory of black magic and slow poisoning now have been reduced to defendant's fears and beliefs, what this fact proves is that the plaintiff indeed had been helping the testator. Therefore, it is possible that the testator might have granted the plaintiff a share in his estate. Here it is significant to note that this defendant has no grievance against S.K.Ramanujam the eldest son of testator getting 2/3 share under the same Will. And, this also goes against the challenge to the Will.

12. To conclude this Court finds that Ext.P-2 Will, dated 22.11.2000 executed by late Mr.S.K.Srinivasan and attested by P.W.2, Mr.A.Avudainayagam and P.W.3, Mr.A.Rangan is genuine, and the Will has been proved, and the same is hereby probated. Accordingly, the testamentary original suit is decreed. There shall be no order as to costs.

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Index : Yes / No
Speaking order / Non-speaking order
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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
P.W.1	K.S.Varadharajan (Plaintiff)
P.W.2	A.Avudainayagam
P.W.3	A.Rangan
<i>Defendants :</i>	
D.W.1	S.K.Venkatesan (Defendant)
D.W.2	K.S.Chitra

II. Exhibits :

Ext.P1	27.10.2006	Original Death Certificate of the testator Mr.S.K.Srinivasan
Ext.P2	22.11.2000	Will executed by testator Mr.S.K.Srinivasan
Ext.P3	23.07.2007	Affidavit of assets
Ext.P4	13.02.2007	Certified copy of Legal Heirship Certificate of Mr.S.K.Srinivasan
Ext.P5	***	****
Ext.P6		Souvenir on Seminar on Point Processes and Product Densities (SPP-2003)
Ext.P7		Official version of Seminar Proceedings
Ext.P8		Book on Point Processes and Product Densities
Ext.P9	16.10.2000	Cancelled cheque in original bearing No.395905 issued in favour of Revenue Officer, Corporation of Chennai, drawn of M/s.Chennai Central Co-operative Bank Ltd., West Mambalam Branch, Chennai-33.
Ext.P10	22.10.2006	Original copy of burial ground receipt
Defendants :		
Ext.D1	03.06.2007	Cetified copy of petition in OP.No.726 of 2007
Ext.D2	03.06.2007	Amended copy of TOS served on the defendant
Ext.D3	08.03.2012	Order in Comp.Appln.No.788 of 2011



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Ext.D4	22.08.1979	Sale Deed executed in favour of late S.K.Srinivasan
Ext.D5 series		Certified copy of police complaint given by Chithra
Ext.D6	20.04.2011	Certified Copy of the plaint filed in O.S.No.3556 of 2011
Ext.D7	18.08.2011	Copy of the written statement filed in O.S.No.3556 of 2011
Ext.D8	04.08.2014	Certified copy of the order in M.C.No.15 of 2011
Ext.D9	15.06.2011	Xerox copy of the legal notice issued by the defendant
Ext.D10	28.06.2007	Xerox copy of the legal notice issued to the plaintiff counsel
Ext.D11	26.03.2008	Xerox copy of the letter addressed to the Administrator, Anubhav Group of Companies by the defendant
Ext.D12	25.02.2009	Xerox copy of the letter addressed to the Administrator, Anubhav Group of Companies by the plaintiff
Ext.D13 series		Challan of Anubhav Group of Companies
Ext.D14	14.04.2007	Letter addressed to Mr.S.K.Srinivasan by the Administrator, Anubhav Group of Companies
Ext.D15	21.11.2011	Notice given by defendant's advocate in C.A.No.788/2011
Ext.D16	24.06.2003	Letter addressed to the Administrator, Anubhav Group of Companies by the testator Mr.S.K.Srinivasan
Ext.D17	20.02.2007	Proof Affidavit of attesting witness Mr.A.Rangan, filed in OP.No.726/2007
Ext.D18		Certified copy of Ration Card issued to Mr.S.K.Srinivasan
Ext.D19		Certified copy of Passport of defendant - Mr.S.K.Venkatesan
Ext.D20		Certified copy of Bank Passbook of Mr.S.K.Venkatesan
Ext.D21	04.08.1983	Letter sent by National University of Singapore to Mr.S.K.Srinivasan
Ext.D22	15.11.1990	LIC Life Pension Policy of S.K.Srinivasan nominating Mr.S.K.Venkatesan as first nominee
Ext.D23	04.10.1992	LIC Life Pension Policy of S.K.Srinivasan nominating Mr.S.K.Ramanujam as first nominee
Ext.D24	20.06.1995	Share holdings of Mr.S.K.Srinivasan in Southern Green Fields Limited
Ext.D25		School Record of defendant's son
Ext.D26		Certified copy of Voters ID of Ms.Hemalatha



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Ext.D27 series		Original copy of Statement of Account of Mr.S.K.Srinivasan in UTI Mutual Fund
Ext.D28	27.02.2004	Letter by CAMS Investor Service Centre nominating Mr.S.K.Venkatesan for Mr.S.K.Srinivasan
Ext.D29 series		Accounts Statement of Mr.S.K.Srinivasan in M/s.Sundaram Mutual
Ext.D30	21.09.2005	Account Statement of Mr.S.K.Srinivasan in Reliance Mutual Fund
Ext.D31 series		Emails and letters
Ext.D32	31.03.2006	Account Satement of Mr.S.K.Srinivasan in Reliance Mutual Fund
Ext.D33	23.05.2006	Statement of Account of Mr.S.K.Srinivasan in ABI Mutual Fund
Ext.D34	2006-2007	Statement of Account in M/s.Punjab National Bank - Joint Account by Mr.S.K.Srinivasan and Mr.S.K.Venkatesan
Ext.D35 series		List of seurities and investments series (11 Nos.)
Ext.D36	24.04.2007	Letter from Mr.S.K.Srinivasan to M/s.Anubhav Group of Companies & Finance Firms
Ext.D37	15.10.2007	Legal Heirship Certificate
Ext.D38	25.01.2008	Letter addressed to Mr.S.K.Srinivasan by CAMS providing dividend details
Ext.D39	31.03.2008	Account Statement of Mr.S.K.Srinivasan in JM Financial Mutual Fund
Ext.D40	04.06.2008	Letter addressed to the plaintiff by Reliance Mutual Fund with a copy marked to defendant.
Ext.D41	09.06.2008	Letter addressed to the plaintiff by HDFC Mutual Fund with a copy marked to defendant
Ext.D42 series	04.08.2008	Hospital O.P. chits of Mr.S.K.Venkatesan
Ext.D43	11.08.2010	Petition filed under Section 301 Cr.P.C. before XXIII Metropolitan Magistrate at Saidapet, Chennai.
Ext.D44	26.02.2011	Letter from the defendant's Advocate addressed to the Administrator, Anubhav Group of Companies



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Ext.D45	05.03.2011	Reply letter given by the counsel for Anubhav Group of Companies
Ext.D46	30.06.2011	Statement of Accounts of Mr.S.K.Srinivasan in M/s.ICICI Bank
Ext.D47	11.07.2011	Copy of petition affidavit in CA.No.788 of 2011 filed before High Court of Madras by Mr.S.K.Venkatesan
Ext.D48	16.06.2013	Letter addressed to The Assistant Commissioner of Police, Saidapet, Chennai by Mr.S.K.Venkatesan
Ext.D49	30.09.2013	Statement of Accounts of Mr.S.K.Srinivasan in M/s.ICICI Bank
Ext.D50	29.10.2013	Certified copy of decree in O.S.No.3556 of 2011
Ext.D51	29.10.2013	Certified copy of judgment in O.S.No.3556 of 2011
Ext.D52	07.11.2016	Investment Details of Mr.S.K.Srinivasan in M/s.LIC Mutual Fund
Ext.D53	03.08.1982	Letter sent by the testator to defendant's cousin, Ms.Chitra
Ext.D54 series	05.07.2018	Letter given by M/s.Punjab National Bank certifying Mr.S.K.Venkatesan to operate the bank account and statement of accounts
Ext.D55		Photocopy of Passbook of S.K.Venkatesan in M/s.C.C.Bank
Ext.D56		Photocopy of Pass Book of Mr.S.K.Venkatesan in M/s.State Bank of India, IIT, Madras-36
Ext.D57	12.04.2007	Letter addressed to Mr.S.K.Venkatesan regarding transmission of investment to his name by CAMS
Ext.D58	04.10.2004	Receipt for payment of Rs.60,000/- made to the joint account of Mr.S.K.Srinivasan and Mr.S.K.Venkatesan in Post Office Saving Account
Ext.D59	13.10.1997	Medical Report of Ms.Chitra
Ext.D60		Web Article
Ext.D61		Photographs

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Pre-delivery Judgment in
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