



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA(MD)No.426 of 2005

Jebakumar

... Appellant/Petitioner

vs.

1.Jebakani Ammal (Died)

...2nd Respondents/2nd Respondents

2.Josebel Emerald

3.Rajaiah Solomon

4.Dhanam Manuel

5.Jeyasingh

6.Thomas

7.Kasthuribai

8.Sornam

... Respondents

(R3 to R8 are brought on record as legal heirs of the deceased R1 vide order dated 21.07.2017 in M.P.(MD)Nos.2 & 3/2011 in CMA(MD) No.426/2005).

Appeal filed under Section 299 of the Indian Succession Act, 1925, against the fair and decreetal order dated 13.09.2004 in Probate O.P.No.27 of 2003 on the file of the Subordinate Court, Tuticorin.

For Appellant	: Mr.M.Saravanan
For R2	: Mr.M.P.Senthil
For R3 to R8	: Mr.P.Thiagarajan

JUDGMENT

The petitioner in Probate O.P.No.27 of 2003 on the file of the Sub Court, Tuticorin, is on appeal, aggrieved by the dismissal of the said Original Petition, wherein, he sought for probate for the registered Will dated 26.09.1984 said to have been executed by one Gnanakkan Nadar.

2. Though the appellant/petitioner claims that he is the grandson of Gnanakkan Nadar, the exact relationship is not pleaded in the original petition. The appellant/petitioner would claim that the deceased Gnanakkan Nadar has executed the abovesaid Will bequeathing his property for life to his wife Glory Ammal and on her death, the property will devolve on the appellant/petitioner. There were several other bequests under the Will also. The 1st respondent herein claims that she is the wife of Gnanakkan Nadar and the 2nd respondent herein is the purchaser from the 1st respondent. The 2nd respondent filed a counter to the original petition contending that the Will is not true and genuine. The appellant/petitioner is not the grandson of Gnanakkan Nadar. It was also contended that the 1st



respondent/Jebakani Ammal has been declared to be the wife of Gnanakkan Nadar in O.S.No.6 of 2002, on the file of the District Munsif Court, Srivaikundam.

3. At trial, the appellant/petitioner examined himself as PW1 and examined other witnesses as PW2 and PW3. PW2 is the father of the appellant/petitioner and PW3 is the maternal grandfather of the appellant/petitioner. Exs.A1 to A10 were marked on the side of the appellant/petitioner. On the side of the respondents, the 2nd respondent was examined as RW1. The 1st respondent was examined as RW2 and one Devasoundari was examined as RW3. No documentary evidence was filed on the side of the respondents.

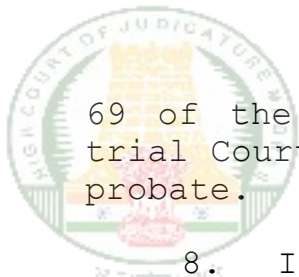
4. Upon consideration of the evidence on record, the learned trial Judge came to the conclusion that the appellant/petitioner has not proved the execution of the Will in the manner known to law. The learned Judge pointed out that though there are two attesting witnesses, one of whom is said to have died, the other person has not been examined.

5. The evidence of PW3 was held insufficient to satisfy the requirements of Section 69 of the Indian Evidence Act, 1872. Under Section 68 of the Indian Evidence Act, 1872, the propounder of the Will is required to prove the Will by examining atleast one of the attesting witnesses to the Will. In the absence of the same, it is open to the propounder to prove that the signatures of the Testator and atleast one of the attesting witnesses, is in his/her handwriting as per Section 69 of the Indian Evidence Act, 1872. The other situations contemplated under Sections 70 and 71 of the Indian Evidence Act, 1872, do not arise in the case on hand. PW3 has been examined in an attempt to satisfy the requirements of Section 69 of the Indian Evidence Act, 1872.

6. Section 69 of the Indian Evidence Act, 1872, reads as follows:-

''69.Proof where no attesting witness found.-If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.''

7. A reading of Section 69 of the Indian Evidence Act, 1872, would show that if attesting witness could not be found, an obligation is cast on the propounder to prove that the attestation by atleast one attesting witness is in his/her handwriting and the signature of the Testator is in his/her handwriting. PW3 does not speak about the signatures of the attesting witnesses. PW3 has only spoken about the signature of the Testator. Therefore, the evidence of PW3 is insufficient to satisfy the requirements of Section



69 of the Indian Evidence Act, 1872. In the circumstances, the trial Court has come to a just conclusion in rejecting the claim for probate.

8. I therefore do not see any merit in the appeal. The Civil Miscellaneous Appeal fails and accordingly dismissed. No costs.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Subordinate Judge,
Tuticorin.

Copy to

The Section Officer, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-6097[F] dated 15/02/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-6241[F] dated 15/02/2022)

CMA(MD)No.426 of 2005

DATED : 14.02.2022

SE (CO)

KB(08.03.2022) 3P 5C