



Appeal Suit No.529 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

Coram

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

**Appeal Suit No.529 of 2018
and
C.M.P.No.13351 of 2018**

S.Anbarasan

... Appellant

Vs.

1.Pushpavalli

2.S.Ezhilarasi

3.T.Thamilarasi

4.M.Kalaiaarasi

... Respondents

First Appeal filed under Section 96 r/w Order XLI Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree passed in O.S.No.24/2008, dated 23.11.2016 on the file of Principal District Court, Thiruvarur.

For Appellant : Mr.M.Thamizhavel

For Respondents : Mr.B.Ramamoorthy [R1, R2 & R4]
R3 - served - No appearance



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JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

The first defendant in O.S.No.24 of 2008, a suit for partition at the instance of respondents 1 and 2 in the appeal, is the appellant. The suit was laid by respondents 1 and 2, who are the wife and daughter of one A.K.Seeman, who died on 08.01.2003, according to the petitioner, *intestate*. The said A.K.Seeman was employed abroad and he acquired vast extent of properties in Nadukanthankudi village. The plaintiffs and defendants are the wife and children of the said A.K.Seeman. A.K.Seeman died on 08.01.2003. The second plaintiff issued a notice demanding partition on 02.05.2006. The first defendant, who is the son, sent a reply claiming that A.K.Seeman had executed a Will in his favour, therefore, the plaintiffs are not entitled to any share in the suit properties. A rejoinder was sent by the second plaintiff on 24.07.2006 disputing the execution of the Will. This was followed by the suit on 11.06.2007. The suit was resisted by the first defendant contending that the deceased A.K.Seeman had left a Will dated 15.09.2001 under which he had bequeathed all his immovable properties to his son. It was also claimed that the movables, *viz.*, fixed deposits which stood in the name of A.K.Seeman were distributed among the heirs by first plaintiff, wife of



A.K.Seeman. It was also contended that defendants 2 and 3, who are other two daughters of A.K.Seeman were married off by A.K.Seeman himself and the second plaintiff's marriage was performed by first defendant after the death of A.K.Seeman. He also claimed that he had incurred huge expenses for performance of the marriage of daughters of A.K.Seeman.

2. On the above pleadings, learned trial Judge framed the following issues:

- (i) Whether the Will dated 15.09.2001 executed by A.K.Seeman in favour of the first defendant is true and valid ?
- (ii) Whether the plaintiffs are entitled to 2/5 share in the properties ?
- (iii) Whether the defendants 2 and 3 are entitled to 1/5 share as claimed by them ?
- (iv) Whether the plaintiffs are entitled to the partition as claimed by them ?
- (v) To what all the other reliefs the plaintiffs are entitled ?

3. At trial, the first plaintiff was examined as PW-1 and Exs.A1 to A28 were marked. The first defendant was examined as DW-1, one of the attesting witnesses to the Will viz., Sivaprakasam was examined as DW-2,



the son of the scribe of the Will was examined as DW-3 and an assistant from the office of the Sub-Registrar was examined as DW-4. Exs.B1 to B4 were marked. The Will, which is in dispute, was marked as Ex.B4.

4. Upon consideration of the evidence on record, learned trial Judge concluded that the first defendant has not proved the Will in the manner required by law. Learned trial Judge disbelieved the Will on certain circumstances which are :

- The Will was written at the residence of DW-2, attesting witness and no reason has been assigned as to why the Will was not written either at the residence of A.K.Seeman or the scribe V.Gopal.
- The Will does not contain any reason for disinheriting the wife and daughters.
- The attesting witness, viz., DW-2 claimed ignorance of the contents of the Will.
- The first defendant had not taken steps to have the Will registered even after the death of A.K.Seeman.
- The first defendant had not disclosed the Will immediately after the death of A.K.Seeman.



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- DW-2 is unable to give details of the contents of the Will and the discussion between A.K.Seeman and the scribe V.Gopal.

5. On disbelieving the Will for the above reasons, learned trial Judge concluded that the plaintiffs would be entitled to a share in the suit properties since ownership of A.K.Seeman was never in dispute. Aggrieved by the decree and judgment, the first defendant has come up with this appeal.

6. We have heard Mr.M.Thamizhavel, learned counsel appearing for the appellant, Mr.B.Ramamoorthy, learned counsel appearing for respondents 1, 2 and 4. The third respondent, though served, has not appeared either in person or through his counsel.

7. Mr.M.Thamizhavel, learned counsel appearing for appellant, would vehemently contend that the reasons ascribed by the trial Court for disbelieving the Will are wholly unsustainable. Relying heavily upon the evidence of DW-1 and DW-2, learned counsel would contend that execution of the Will and its due attestation has been proved beyond doubt. Faulting



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the trial Court for disbelieving the Will on the ground that the first defendant had not taken any steps to have the revenue records altered as per the Will, learned counsel would point out that it has been the consistent case of the first defendant that the Will was in the custody of the mother and the mother gave it to him after the notice was issued. This plea of the first defendant, according to learned counsel, is probalised by the fact that the plaintiffs have produced almost all original documents commencing from 1949 till 1989 under which A.K.Seeman had purchased various properties. The very fact that the first plaintiff has been in possession of all these documents would by itself show that the Will was also in possession of the first plaintiff. Learned counsel would also draw our attention to the evidence of DW-1 wherein he had specifically stated that the Will was with the mother and all the documents were with the mother and till the marriage of the second plaintiff, there was no dispute in the family and the first plaintiff and the first defendant maintained a very cordial relationship.

8. Learned counsel would also submit that the evidence on record would show that the scribe of the Will V.Gopal was a very close confidant of A.K.Seeman and that claim stood proved by the fact that V.Gopal, the scribe



of the Will has scribed majority of the sale deeds under which A.K.Seeman had purchased the properties.

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9. DW-3, son of V.Gopal, was examined to show that the Will has been, in fact, written by his father. Learned counsel would also point out that no motive could be attributed to V.Gopal to have colluded with the first defendant in preparation of the Will.

10. For all the above reasons, learned counsel would submit that the trial Court was not right in disbelieving the Will.

11. Contending contra, Mr.B.Ramamoorthy, learned counsel appearing for respondents 1, 2 and 4 would submit that the evidence of DW-2, attesting witness, is not reliable since he is unable to give particulars about the contents of the Will though he would say that he was present through out the preparation of the Will. Learned counsel would further submit that it is strange that a very affluent person like A.K.Seeman would go to a house of a third person to execute a Will. Learned counsel would also submit that DW-1, in his cross-examination, has admitted that he is



prepared to give some share to the daughters, which would itself show that the Will is not true and valid.

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12. We have considered the rival submissions.

13. The entire dispute hinges on the Will. If we are to conclude that the Will is true and valid, the suit has to fail. Therefore, the only issue that would arise in this case is whether the Will, Ex.B4, is true and valid. We have extracted the reasons assigned by the trial Court to disbelieve the Will.

14. We can straightaway say that those reasons are not convincing. A Will is a document which speaks from the death of a testator. Of course, a very high standard of proof is expected from the propounder of the Will, that too, when a Will seeks to disinherit the other heirs. In the case on hand, we have the evidence of DWs.2 and 3 in support of the Will. DW-2 is one of the attestors to the Will and DW-3 is the son of the scribe. DW-2 has spoken about execution of Will by A.K.Seeman very clearly. The cross-examination has not dented his evidence on the execution of Will as such. True, DW-2 has stated that he did not know the contents of the Will and he did not know



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the reasons as to why A.K.Seeman and V.Gopal came to his house to prepare the Will. He has very categorically stated that V.Gopal was his close friend and A.K.Seeman and V.Gopal were very close.

15. As rightly pointed by learned counsel for appellant the fact that A.K.Seeman and V.Gopal were very close is borne out by documentary evidence on record. The very fact that V.Gopal has scribed majority of the sale deeds under which A.K.Seeman had purchased properties would show the relationship between them. Therefore, there is nothing surprising about the fact that they chose the house of the friend of V.Gopal to prepare the Will. DW-3 has very categorically stated that A.K.Seeman and his father were very close friends. He has also stated that Ex.B4-Will was written by his father and it bears his signature as scribe. No motive has been attributed to V.Gopal for having prepared the Will in collusion with the first defendant. It is also admitted that the first defendant did not claim any exclusive right to the movables, particularly, fixed deposits which were available in the name of A.K.Seeman and they were distributed to the daughters also. We do not see anything strange in the bequeath made by his father only in favour of the son, that too, taking note of the very cordial relationship between the mother and the son.



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16. The first plaintiff is possessed of separate properties in her name.

We could see a case where A.K.Seeman had purchased properties in her name and taking into account the fact that the several properties were standing in the name of his wife, he would have decided to bequeath his properties to his only son. The fact that the mother is possessed of property is admitted and therefore, the disinheritance of the mother and daughters by itself will not invalidate the Will. We are unable to ignore the evidence of DWs.2 and 3 on the execution and attestation of the Will.

17. We are, therefore, unable to uphold the finding of the trial Court that the Will has not been proved in accordance with law. Once we find that the Will has been executed by A.K.Seeman and properly attested and such execution and attestation have been proved, the onus shifts to the plaintiffs to prove any suspicious circumstances. Except the evidence of PW-1, the first plaintiff, there is no other evidence on record to prove any suspicious circumstances. Even in her evidence, PW-1 has not spoken about any suspicious circumstances. In the light of the above, we are impelled to set aside the finding of the trial Court on the Will. We conclude that the Will has been proved in accordance with law. Once we conclude that the Will has



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been proved in accordance with law, it follows that the suit has to necessarily fail.

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Accordingly, the appeal is allowed and the suit [O.S.No.24/2008] shall stand dismissed. Considering the relationship between the parties, we do not impose costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J] [N.S., J]
09.11.2023

Index:No
Speaking Order
Neutral Citation: No

gm

To
The Principal District Court,
Thiruvarur.



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