



TOS.No.78 of 2018

order dated 11.04.2018 in A.No.1828/2018)

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Defendants/defendants

Prayer :- Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 under Order XXV, Rule 5 of O.S. Rules, praying to grant letters of Administration, with the Will annexed maybe granted to her as the beneficiary under the Will of the said deceased having effect through out the State of Tamil Nadu.

For plaintiff : Mr.T.K.Viswanath

For defendants : Mr.S.Badrinath for R1 & R2
Mr.P.Jayaprakash for R3 & R4

JUDGMENT

The Testamentary Original Suit has been filed to grant Letters of Administration with the Will.

2.The averments of the Complaint in brief:

The plaintiff is the mother of the testator by name VijayaSekar. The defendants 1 and 2 are wife and daughter of the deceased VijayaSekar and the defendants 3 to 5 are siblings of the deceased VijayaSekar.

2.1. The case of the plaintiff is that the testator Vijayasekar executed a registered Will, dated 29.12.1999 in respect of scheduled properties bequeathing the life interest in favour the plaintiff and thereafter to be



acquired by the defendants 3 and 4 and their children. The said Vijayasekar died on 29.04.2000.

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2.2. According to the plaintiff, the first defendant left the matrimonial home along with the 2nd defendant and they were residing at her mother's house. Since her marriage with the testator failed the first defendant did not rejoin the deceased till his death. The registered Will has been executed in presence of the witnesses mentioned therein. Consequent to the death of the testator the plaintiff has filed this suit by seeking letters of Administration.

2.3. The defendants 3 and 4 who are the sisters of the deceased had filed consent affidavit which forms part of the record. The 5th defendant set exparte on 28.11.2022.

3.The Written statement of the first and second defendants in brief:

The contesting defendants are the defendants 1 and 2 and they are wife and daughter of the deceased. They are contesting the suit by stating that there is no dispute between themselves and the testator. The first defendant is a teacher and she is taking care of the 2nd defendant. The alleged Will is not true. Being the legal heirs of the deceased Vijayasekar, the defendants 1



and 2 have also got their due share in the suit property.

4. The reply statement in brief:

The plaintiff filed a reply statement by denying the averments made by the defendants 1 and 2. She further submitted that the deceased Vijayasekar filed a petition in O.P.No.698 of 1999 before the Family Court, Chennai for restitution of conjugal rights and the same had been allowed on 26.08.1999. Even thereafter, the first defendant did not come and live with the deceased Vijayasekar. By suppressing all these facts, the first defendant had filed a written statement. The deceased Vijayasekar had committed suicide at Maruthadu Village in Tiruvannamalai District and in this regard, a case has been registered in Crime No.109 of 2000 under Section 174 of Cr.P.C., and the body of the deceased was handed over to the plaintiff only after post-mortem. Since the Will was executed in favour of the plaintiff, the defendants 1 and 2 are not entitled to any share in the suit property. The partition suit filed by the defendants 1 and 2 in O.S.No.2705 of 2012 before the IV Additional City Civil Court, Chennai had also already been dismissed.



5. On considering the pleadings of the respective parties, the following issues were framed:

- 1. Whether the Will dated 29.12.1999 executed by the Testator Vijayasekar is true, valid and binding on the defendants?*
- 2. Whether the plaintiff is entitled to obtain the letters of administration as regards the Will dated 29.12.1999 executed by the Testator Vijayasekar as claimed in the plaint?*
- 3. To what other relief the plaintiff is entitled?*

6. During the course of trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.P1 to P5 were marked. On the side of the defendants 1 and 2, D.W1 was examined and Exs.D1 to D3 were marked.

7. The relationship between the parties is not disputed. The testator was the son of the plaintiff and the suit property belonged to him. As per the case of the plaintiff during the life of the testator, he executed a registered Will dated 29.12.1999 by bequeathing the suit property in favour of his mother and in case his mother predeceased him, the property should be inherited by his sisters, who are the defendants 3 and 4 and their children.

8. The plaintiff, who was examined as PW.1 stated in his evidence that



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there was no cordial relationship between her son VijayaSekar and his wife, who is the first defendant herein. The Will has been marked as Ex.P1 and it is a registered Will. Though the defendant had denied the genuineness of the Will, the signature of the testator in the Will was not specifically denied. Excepting the generalised statement that the Will is a fabricated, there is no specific denial about the signature of the executant namely J.VijayaSekar in the Will.

9. P.W.1/Plaintiff has stated in her evidence that even during the lifetime of VijayaSekar, the first defendant got separated from him and she did not choose to live with him. During the cross examination of D.W.1, she has stated that her deceased husband had filed a matrimonial proceeding in HMOP. No. 698 of 1999, for restitution of conjugal rights and the same has been allowed. Even after the order was passed by the Family Court for restoration of conjugal rights, the first defendant was not in a mood to come back and join the VijayaSekar.

10. The registered Will is marked as Ex.P.1. There are recitals in the Will to the effect that during the life time of the testator his wife did not come back from her parents house and hence he had filed a matrimonial case in HMOP.NO.698/1999 for claiming restitution of conjugal rights.



Despite the petition was allowed, his wife did not obey the orders and return to her matrimonial house to live with the testator.

11. The averments of the Will would further read that the first defendant did not choose to obey the order by joining with the testator. The whole reading of the recital of the Will would show that the testator was under compelling circumstances only because his wife got separated from him. It is further stated in the Will that a female baby was born on 07.09.1999 due to the wedlock of the 1st defendant and the testator, but the 1st defendant did not allow him to meet the child or invite him to the naming ceremony of the child.

12. In the chief examination of DW.1, who is the first defendant herein, it was stated that there was no dispute between her and her husband VijayaSekar at any point in time. But the fact remains that the couple did not live happily from shortly after their marriage and the first defendant got separated from VijayaSekar and was living at her parents' house. During the cross examination of D.W.1, she has stated that herself and VijayaSekar lived together for only a period of 11 months and thereafter she lived at her father's place. She had admitted that thereafter she did not live with VijayaSekar. But he came to her father's house to see the child after she



delivered the baby on 07.09.1999.

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13.The further evidence of DW.1 is that when the child was at 5 months, VijayaSekar called her to live with him but she told that she could not live in a joint family and she wanted to find out a separate accommodation. In fact, she has admitted that the Will is a registered will, signed by VijayaSekar on all pages. So the evidence of D.W.1 itself would show that the execution of the Will and the signature of the executant of the Will are admitted. The evidence of DW.1 would also make it clear that D.W.1 was not living with VijayaSekar. At the time of his death also the first defendant did not live with him.

14.In fact, the testator, VijayaSekar, had committed suicide, and in this regard, a death report was prepared by the jurisdictional police, wherein it is shown that the deceased had committed suicide by jumping into a Well as he was frustrated due to failed marriage. The death report of the testator has been produced and is marked as Ex.P.2, and the death certificate of the testator has been produced and is marked as Ex.P.3.

15. From Ex.P.3, it is seen that the date of the death is 29.04.2000 . Ex.P.1 is the last Will executed by VijayaSekar, in which he has bequeathed his undivided 1/3rd right in the suit property in favour of his mother. The



Will has been attested by two witnesses by names Ganesh Babu and Shankar. The Will was prepared by an advocate by name Mahendiran and these facts have been stated by PW.1 also. One of the attestors of the Will was examined as PW.2. PW.2 has stated in his evidence about the sound disposing state of mind of the testator at the time of executing the Will. PW.2 has deposed in his evidence about the manner in which the Will was executed by the deceased VijayaSekar and the disposition made by the testator in respect of the suit property in his presence and the attestation made by him. The Will was a registered Will and PW.2 has stated that he made his presence at the Sub Registrar Office and affixed his signature on the Will and also before the Sub Registrar during registration.

16. The evidence of PW.2 is cogent and natural and his cross-examination did not bring out anything adverse to his chief examination. The testator, who had some misunderstandings with his wife, had chosen to execute the will, keeping it in mind that the property should not be inherited by her or her daughter. Even though in the Will, the testator has stated all his dislikes for his wife, the fact remains that he did not want his property going into the hands of the 1st defendant and eventually to the 2nd defendant also.



17. Since the intention of the testator is to exclude his estranged wife and the minor daughter, who was under the custody of the wife, from inheriting the property belonging to him was proved and the execution has also been proved through the evidence of the plaintiff's witnesses, especially the attester, I feel due consideration should be given to the intention of the testator. However, the learned counsel for the defendants submitted that no father will exclude his minor daughter from inheriting his property and the way in which the Will has been executed by excluding his daughter would show that the Will was a created one and that the testator was under the influence of his mother and his siblings.

18. The learned counsel for the plaintiff submitted that the exclusion of certain legal heirs alone cannot render the Will as suspicious one. In fact, the very object of executing the Will itself to exclude some of the legal heirs from inheriting the property. In support of the above contention, the learned counsel for the plaintiff relied on the decision of the Hon'ble Supreme Court held in *LeelaRajagopal & others Vs. Kamala Menon Cocharan & others* reported in 2014(6) CTC 80.

19. In the above judgment it is held that if the Will does not have any unusual features or unnatural circumstances, there is no need to attach any



suspicion over the Will. In this regard, it is relevant to extract Paragraph 10 as follows:

“10. A Will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the Court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

20. In the case in hand also from the recitals of the Will, it is seen that the testator had stated that the circumstances in which he wanted to bequeath his property to his mother rather than his wife and his child. The



1st defendant has admitted in her cross examination that she was living away from the testator and the testator had chosen to commit suicide due to his failed marriage. The circumstances in which the Will was executed falls beyond suspicion. The holistic reading of the Will would indicate that there is no ambiguity or confusion in the mind of the testator and he was clear to exclude the defendants from inheriting his properties. The evidence of P.W.2 who had participated during the execution and registration of the Will is also very natural and it is not susceptible to any doubt or any uncertainty.

20. It is submitted by the learned counsel for the defendants that the minor second defendant should not be left from inheriting the property of her father and that there should be some arrangement to her benefit. Since the Will of her father is otherwise and he did not opt her to inherit his property, the court cannot help but honor the intention of the testator. The plaintiff has proved the execution of the Will beyond a reasonable doubt on the basis of the oral or documentary evidence and within the context of Sec.63(c) of the Indian Succession Act and Sec.68 of the Indian Evidence Act. Hence, I find no reason to deny the relief sought by the plaintiff and thus, this Testamentary Original Suit should be and thus the issue Nos.1 to 12/16



TOS.No.78 of 2013

3 are answered in favour of the plaintiff.

In the result,

(i) The suit in TOS.No.78 of 2013 is **allowed and decreed** the Letters of Administration, having effect throughout Tamil Nadu, shall be issued in favour of the plaintiff in respect of the Will executed on 29.12.1999 by the testator VijayaSekhar in favour of the plaintiff.

(ii) The plaintiff is directed to duly administer the estate of the deceased as mentioned in the suit schedule.

(iii) The plaintiff shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S-II), High Court, Madras.

(iv) The plaintiff is further directed to render true and correct accounts once in a year.

(v) No costs.

28.04.2023

jrs

Index : Yes/No

Internet : Yes/No

Speaking/ Non Speaking

Neutral : Yes /No



TOS.No.78 of 2013

APPENDIX

I. Witnesses :

Plaintiff :	
P.W.1	R.Jamuna Bai
P.W.2	K.S.Ganesh Babu
Defendants :	
D.W.1	Tmt.Padmavathi

II. Exhibits :

Ext.P1	21.11.2006	The original Will dated 29.12.1999 Doc.No.168/1999 (Will was safety custody for probate)
Ext.P2	21.11.2006	The original Death Certificate of Testator dated 06.06.2000
Ext.P3	25.04.2017	The affidavit of assets filed by the plaintiff
Ext.P4	25.04.2017	The affidavit of attesting witness of K.S.Ganesh Babu
Ext.P5	12.06.2018	The certified copy of the Partition Deed (Doc.No.3281/1996)
Ex.D1	25.03.2019	The certified copy of the sale deed (Doc.No.3242/2001) dated 27.09.2001
Ex.D2	25.03.2019	The certified copy of the sale deed (Doc.No.3242/2001) dated 27.09.2001
Ex.D3	25.03.2019	The certified copy of the Sale Deed (Doc.No.944/2004) dated 03.03.2004

28.04.2023



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TOS.No.78 of 2015



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TOS.No.78 of 2013

R.N.MANJULA, J.

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Testamentary Original Suit No.78 of 2013 in
(O.P.No.559 of 2002)

28.04.2023