



T.O.S.No.85 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM : JUSTICE N.SESHASAYEE

T.O.S.No.85 of 2013

C.Madhu

.... Petitioner / Plaintiff

Vs

C.Amutha

.... Caveator / Defendant

Prayer : Petition filed under Section 232, 255 & 276 of the Indian Succession Act XXXIX of 1995 for the grant of Probate.

For Plaintiff : Mr.S.Krishnasamy

For Defendant : Mr.Niranjan Rajagopalan

JUDGMENT

A certain SP.Chockalingam Chettiar died, possessed of four items of immovable properties, on 10.02.2012. Some 13 years prior to that, to be precise on 21.05.1999, he had executed a registered Will bequeathing his



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immovable assets in favour of his only son Madhu, the plaintiff herein. Besides Madhu, he had two other daughters namely Abirami and Amudha, and he also left behind his surviving widow Meenakshi. The testator has nominated his sole legatee as executor under the Will. It is in this circumstances, on the demise of the testator, the executor / legatee has laid O.P.No.189 of 2012 for probate. All the other heirs of Chockalingam were cited as party respondents in OP, and it was opposed by one of his daughters namely Amudha, who entered on a caveat, on the ground that the properties dealt with by the testator are ancestral in character, and that Chockalingam did not have absolute title to the properties for him to bequeath them in favour of his son alone.

2. The petition for grant of probate was now converted into a testamentary suit. The caveator Amudha had filed her written statement, and she had taken up the following contentions :

- (a) that the properties dealt with under the Will are ancestral in character;
- (b) that the testator has not executed the Will with his free will and he was put under duress into executing the Will.



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3. The following issues were framed by this Court and the matter was placed before learned Master of this Court for recording the evidence :

- (1) Whether the Will dated 21.05.1999 executed by S.P.Chockalingam Chettiar while he was in sound and disposing state of mind or coercion and without free mind as pleaded by the defendant?*
- (2) Whether the properties bequeathed under the Will dated 21.05.1999 are the self acquired properties of the testator S.P.Chockalingam Chettiar or his ancestral properties as pleaded by the defendant?*
- (3) Whether the testator S.P.Chockalingam Chettiar had testamentary right to execute the Will dated 21.05.1999?*
- (4) Whether the Will can be challenged on the grounds that the properties are bequeathed only to the plaintiff leaving his wife and two daughters?*
- (5) Whether value of the suit determined by the plaintiff and the Court Fee paid thereon is correct?*
- (6) To what other reliefs, the parties are entitled to?*

4. On the side of the plaintiff, he examined himself as P.W.1 and he



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propounded the Will dated 21.05.1999 executed by SP.Chockalingam, and it came to be marked as Ext.P1. Besides, he also produced six other documents, and they came to be marked as Ext.P2 to Ext.P7. Of them, Ext.P4 is an auction notice issued by M/s.Murray & Co., and Ext.P6 & Ext.P7 are copies of sale deeds pertaining to some immovable properties in the name of the testator. The plaintiff had also examined an attesting witness to the Will as P.W.2. For the contesting defendant, she examined herself as D.W.1 and she marked no documents.

5. The learned counsel for the plaintiff submitted that so far as the scope of the suit is concerned, the Court need to focus essentially on the proof regarding the genuineness of the Will, and here the only objection raised by the defendant is that the testator was put under duress to execute the Will. However, the Will is a registered Will and the testator lived for another about 13 years, and he did not choose to revoke his Will. This apart, no circumstances as could prove the defence has been elicited either from the plaintiff, or from the attesting witness, and the evidence offered by the defendant in support of her case is essentially self-serving.



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6. The learned counsel for the defendant would argue that the Will had excluded the daughter, who is the natural heir, and this has to be countenanced and cannot be ignored. The very fact that some of the natural heirs who are placed in the same plane as the plaintiff have been excluded, lends a strong suspicion regarding the genuineness of the Will.

7.1 On appreciating the rival contentions closely, this Court has to segregate the two defences offered by the defendant. So far as her contention that the properties are ancestral in character is concerned, that issue has to be left open for the present. It may be that the plaintiff had filed some of the title deeds of the testator, but then to consider them at this stage would amount to expanding the scope of testamentary jurisdiction of this Court.

7.2 Turning to the second contention, and critical to the prayer of the plaintiff is concerned, her plea is that the testator was put under duress and that he has not executed Ext.P1, Will with his free consent. On this, this Court finds considerable force in the submission of the plaintiff when he contended that the testator had died some 13 years after the execution of the Will. And this Court also finds that nothing has been elicited from P.W.1 or P.W.2 to provide a



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believable circumstance for the Court to conclude that the Will possibly might not have been executed with free will of the testator. And as rightly argued by the counsel for the plaintiff, the oral testimony of the defendant was essentially self-serving.

9. Turning to the contention of the learned counsel for the defendant is concerned, this Court considers that it tried to build a case in right earnestness, but unfortunately, it is not backed by sufficient pleadings. A mere fact that the testator has excluded one of the natural heirs by itself might not be adequate to taint the execution of the Will with suspicion. After all, it is the choice of the testator and in jurisprudence it is an expression of the power of the testator and that cannot be questioned. On her evidence, this Court finds that the defendant was not able to create a dent in the case of the plaintiff. Hence, this Court necessarily needs to hold that the registered Will dated 21.05.1999 executed by late SP.Chockalingam is genuine. As already outlined earlier, the issue regarding the character of the immovable properties covered under the Will is left open.



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10. In fine, T.O.S.No.85 of 2013 is decreed. Probate is issued to the Will dated

21.05.1999 executed by SP.Chockalingam Chettiar in favour of the plaintiff.

There shall be no order as to costs.

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Index : Yes / No

Speaking order / Non-speaking order
ds



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APPENDIX

WEB COPY **I. Witnesses :**

<i>Plaintiff :</i>	
P.W.1	C.Madhu
P.W.2	PR.Annamalai
<i>Defendant :</i>	
D.W.1	C.Amutha

II. Exhibits :

Ext.P1	21.05.1999	Xerox copy of the Will executed by SP.Chockalingam in favour of C.Madhu
Ext.P2	17.02.2012	Original death certificate of SP.Chockalingam
Ext.P3	03.07.1974	Certified copy of sale deed executed in favour of SP.Chockalingam
Ext.P4	12.03.1979	Auction Notice issued by M/s.Murray & Co., in respect of the property at Plot No.24 (New No.15), Bajanai Koil Street, Kodambakkam.
Ext.P5	02.03.1979	Letter addressed to M/s.Murray & Co., by Madras Fertilizers Limited
Ext.P6	14.03.1986	Certified copy of sale deed executed in favour of SP.Chockalingam
Ext.P7	09.05.1990	Certified copy of sale deed

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N.SESHASAYEE.J.,

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