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TOS.No.52 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2023

PRONOUNCED ON :24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.52 of 2016

1. S.Vijaya Kumar
2. S.Rajalakshmi

...Plaintiffs

...Vs...

Uma Sarguru

...Defendant

Prayer:- This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act and Order 25 Rule 5 of the Original Side Rules, for the relief as stated therein.

For Plaintiffs : Mr.Srinath Sridevan,
SC for M/s.S.Aishwarya

For Defendant : Mr.V.Kubendran



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JUDGMENT

This Testamentary Original Suit has been filed to grant Letters of Administration with the Will annexed to the Plaintiffs as the last Will and testament of the deceased V.K.P.Sunkavallu, having effect throughout the State of Tamil Nadu.

2. The case of the Plaintiffs is as follows:-

The 1st Plaintiff is the only son of the deceased V.K.P. Sunkavally and the 2nd Plaintiff is the wife of the deceased. The Respondent is the only daughter of the deceased. The deceased died on 01.03.2012 at C-3, 4th Floor, Silver Park Apartments, No.24. Thanikachalam Road, T.Nagar, Chennai-17. At the time of his death, the deceased left properties at Chettiaragaram Village, Ambattur Taluk. The religious ceremonies, were conducted in the native village at Unguturu, West Godavari District, Andhra Pradesh. The deceased, during his life time, executed a registered Will, dated 24.08.2011 at Chennai and he did not appoint any Executor in the said Will. The parents of the deceased Testator predeceased him long ago. There is no other next-of-kin left behind by the deceased Testator. By the said Will, the deceased had



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bequeathed the property mentioned in the Will, measuring about 10 acres 46 cents situated at Chettiaragaram Village, Ambattur Taluk, Tiruvallur District, purchased by him in the name of the Respondent to the 1st Plaintiff. In respect of the said property, OS.No.301 of 2010 filed for declaration and permanent injunction by the deceased against the Respondent is pending. As per the said Will, the 1st Plaintiff shall pay a sum of Rs 30 lakhs to the children of the defendant and if the defendant challenges the Will, the 1st Plaintiff need not pay the said sum. The Plaintiffs have filed affidavits of both the attesting witnesses.

(ii) The amount of assets, which is likely come into the hands of the Plaintiffs does not exceed in the aggregate sum of Rs. 2,14,367/- and the net amount of the said assets, after deducing all the items, which the Plaintiffs, are by law allowed to deduct, is only of the value of Rs.1,94,367/-. The Plaintiffs undertake to duly administer the property and the credits of the said deceased Testator, in any way concerning his Will, by paying first his debts and then, the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in the Court, within six months from the date of grant



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of Probate, with the Will annexed to the Plaintiffs and also to render a true account of the said property and credits within one year from the said date.

No application has been made to any District Court or delegate or to any other High Court for probate or any Will of the said deceased or Letters of Administration with or without the Will annexed to his properties and credits. Hence, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.

3.The case of the Defendant, as set out in the written statement, is as follows:-

The Will is not genuine and has not been executed by the deceased Testator out of his own volition and willingness. The deceased Testator has no right to bequeath the property, when the property does not belong to him, but belonged to the Defendant. The Defendant had also settled the same in favour of her husband in the year 2009 and OS.No.301 of 2010 filed by his father against her for declaration and permanent injunction is pending. The Will affecting the right of the Defendant over the property in the said suit, is the subject matter of the present TOS. The deceased staying independently away from the Plaintiffs has been admitted by the Plaintiffs.



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As per the said suit, though the property stands in the name of the Defendant, since it was purchased by the deceased, he sought exemption under Section 4 of Benami Transactions (Prohibition) Act 1988.

(ii) The Defendant is at abroad and the deceased was only appointed as a Power Agent to do things that may be necessary for protecting the property. It is the case of the Plaintiffs that since the Defendant moved away to USA, she need not be given anything from the other family properties, to which she is lawfully entitled. When the health condition of the deceased was very bad nearly for an year, the alleged purported Will had been executed. The decision in the said suit and the finality to be reached thereafter would have lot of repercussions on the issue. As such, the Will is non- est in the eye of law and cannot be propounded. The Plaintiffs have not come with clean hands. In the absence of payment of proper court fees, the suit itself is liable to be rejected. While the Will has referred to three Properties, the same has shown only one property in the Schedule. The witnesses are not known to the family and are strangers. The various references to the legal proceedings are contrary to facts. The Defendant had cancelled the Power of Attorney, on 20.11.1997. The deceased even went to a extent of entering into a MOU



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with one Jeevanandham, projecting himself as a Power of Attorney of the Defendant and had received money. Thus, in all respects, it can be clearly seen that the Will is not genuine and has been fabricated and made at the instance of the 1st Plaintiff for his exclusive benefit. The entire proceedings are pre-mature in nature, since the title of the Testator to the property is subjudice in the Civil Suit pending, which has not reached finality. In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed:-

(1) Whether the Will dated 24.8.2011 is true and genuine?

(2) To what other reliefs are the Plaintiffs entitled?

5. On the side of the Plaintiffs, PW.1 and PW.2 were examined and Ex.P1 to Ex.P9 were marked and On the side of the Defendant, DW.1 was examined and no document was marked.

6. This Court heard the submissions of the learned counsel on



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either side and perused the materials available on record.

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7. The learned counsel for the plaintiffs would submit that the Testator had purchased the suit property out of his own funds and registered the same in the name of the defendant when she was nine years old under the Document No.38 of 2011 in the Sub-Registrar office, T. Nagar, Chennai. While the Testator had faced a series of litigation with respect to the properties purchased by him, the plaintiffs were standing in support of him. Since the defendant is not good term with the Testator, the Testator filed a suit in O.S. No.301 of 2010 on the file of the Sub-Court, Poonamallee against the defendant seeking for declaration that he is the true owner of the suit property wherein injunction order has been passed in favour of the Testator and the same was made absolutely subsequently. The said suit is still pending for final disposal. Even though the Testator is not on good term with his daughter, he had made exclusive provision for his grandchildren, born from his daughter, the defendant herein, to the tune of Rs.30 lakhs conditional upon not disputing the Will.

8.It has been further submitted that the 2nd plaintiff-wife of the



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Testator has given her consent affidavit in granting the Letter of Administration in favour of the 1st plaintiff vide Ex.P4. Further, affidavit of two attesting witnesses have been filed under Ex.P5 and Ex.P6 to prove the Will who were present at the time of execution of Will dated 24.08.2011. Moreover, one of the Attesting Witness in the said Will ie. T.Vivian was examined as PW.2 to prove the signature and state of mind of the Testator at the time of the execution of the Will. Hence, he prays this Court to grant letter of Administration in favour of the 1st Plaintiff with Will annexed.

9. The learned counsel for the defendant would submit that the suit property was purchased and registered in the name of the defendant by her father considering the welfare and future goodness of the defendant. After the defendant has become major in the year 1976 and got married, the suit property was settled in her husband favour in the year 2009. While being so, the Testator has no right to bequeath the property belonged to his daughter to his son by way of Will since the subject suit property is in the name of the defendant's husband by way of Registered Settlement Deed dated 17.12.2009 on the file of SRO, Jt. II, Saidapet.



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10. It has been further submitted that the Testator was not well and was staying on his own leaving the plaintiffs herein. While the Testator was suffering from kidney problem and undergoing regular dialysis during the period of execution of the said Will, how the Testator will execute the said Will with good health and sound mind. Thus, it is clear that the Will is not genuine and has been fabricated and made at the instance of the 1st plaintiff for his exclusive benefit. Hence, he seeks to dismiss the TOS.

Issue Nos.1 and 2:

11. Admittedly, the suit property was purchased by the Testator in his daughter's favour/the defendant herein, while she was minor at the age of 9 out of his own income. Further, the defendant being 9 years old has no income to purchase the suit property and she was depending on her father for everything. Hence, it is proved that the said property has been purchased by the father in the name of his daughter.

12. Further, in view of O.S. No.301 of 2010 which is pending before the Sub-ordinate Judge, Poonamallee, filed by the Testator seeking for declaration, against his daughter/the defendant herein, it can be seen



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that the Testator has no good term with his daughter. Hence, it is evident that the suit property was bequeathed by the Testator in his son favour excluding his daughter/defendant herein.

13. It is proved on perusal of affidavit and evidence of PW.2, that he was a friend of the Testator and present on the day of execution of the Will on 24.08.2011 and yet another witness namely Mr.K.S. Kumar, was also present and they saw the testator, putting his signature in the Will and the testator saw them putting their signatures as witnesses and thereby he has also spoken about the attestation of the document, in accordance with law. The evidence of P.W.2 would also go to show that the testator was in a sound and disposing state of mind and was in a good health, at the time of execution of Ex.P1 Will. The said evidence of PW2 would prove the attestation, execution of the Will and also the sound and disposing state of mind of the testator at the time of execution of Ex.P1 Will.

14. Even though the contentions on the side of the defendants with regard to the suspicious circumstances in execution of the Will and attesting witnesses are strangers to the Testator, they have not proved by



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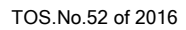
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way of oral and documentary evidence. Further, the Testamentary jurisdiction is invoked only for the purpose of deciding the proof of the Will in order to grant issuance of Letters of Administration. Considering the oral and documentary evidence, the said Will is proved, hence, this Court is inclined to grant Letters of Administration in favour of the 1st plaintiff subject to the result of the O.S. No.301 of 2010.

15. In the result, the TOS is decreed subject to the out come of the O.S. No.301 of 2010 pending in the Trial Court.

(i) The Letters of Administration shall be issued in favour of the 1st plaintiff in respect of the Will executed by the deceased V.K.P. Sunkavally, subject to outcome of of the pending Civil Suit.

(ii) The 1st plaintiff is directed to duly administer the properties and credits of the deceased morefully described in the schedule The 1st Plaintiff is also directed to 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, within a period of three (3) months as required under law. The 1st plaintiff is further directed to render true and correct accounts



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of 2010 (Marked in D.W.1 cross)

9.Ex.P9 is the Photocopy of the Memorandum of Understanding (Marked in D.W.1 cross)

List of Exhibits Marked on the side of the Defendant:-

--Nil--

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A.A.NAKKIRAN, J.

Srcm/Lbm

Pre-Delivery Judgement in
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