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TOS.No.53 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2023

PRONOUNCED ON : 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.53 of 2016

T.R. Venkata Ramana Rao
@ T.R. Venkata Ramana
...Plaintiff

...Vs...

Mrs. T.R. Athlakshmi
@ Ashalatha
....Defendant

Prayer:- This Testamentary Original Suit has been filed, under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 5 of the Original Side Rules, for the grant of Probate with the Will dated 17.03.2008.

For Plaintiff : Ms. A.M. Amutha Ganesh
(For M/s.Norton & Grant)

For Defendant : Mr.K.M. Ramesh



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JUDGMENT

This suit has been filed by the plaintiff originally as O.P.No.305 of 2015 and since the the defendant filed caveat, it has been converted into T.O.S. The said O.P.No.305 of 2015 was filed by the plaintiff/petitioner, for the grant of Probate in respect of the Will dated 17.03.2008, executed by the deceased Sugunabhushanam, who died on 07.12.2012.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

(a) The deceased Testatrix Mrs. Sugunabhushanam, is the Mother of the plaintiff and the defendant. The defendant/1st respondent is the daughter and others including the plaintiff are sons of the Testatrix. The respondents 2 and 3 have given consent affidavits expressing their consent to grant of probate in favour of the plaintiff/petitioner. However, 1st defendant ie. daughter of the Testatrix filed Caveat against the plaintiff.

(b) The Testator had executed a Will dated 17.03.2008 as her last Will appointing the plaintiff/petitioner as a sole executor. The amount of assets, which is likely come into the hands of the Plaintiff does not exceed in the aggregate sum of Rs.76,00,000/- and the net amount of the said



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assets, after deducing all the items, which the Plaintiff, is by law allowed to deduct, is only of the value of Rs.76,00,000/- The Plaintiff undertakes to duly administer the property and the credits of the said deceased Testatrix Mrs. Sugunabhushanam, in any way concerning his Will, by paying first her 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 of Probate, with the Will annexed to the Plaintiff 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, in a nutshell, as set out in his written statement, is as follows:-

a) The petition has been filed with malafide intention to cheat the defendant her rightful share in the family property. There is no such Will



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executed by Late. T.R. Sugunabhushanam and the Will is a Bogus and fabricated one and the Will has not been executed by the Testatrix out of her own free will and volition since the Testatrix always held the defendant as Mahalakshmi of the family and she would not have disinherited the only daughter.

b) The Testatrix is not a literate woman and some foul play has taken place while creating the said Will. By concealing moveable assets like Jewellery, Cash, Silver articles, among other items that was owned and possessed by the Testatrix from the petition goes to show that the plaintiff is not only untrustworthy but also greedy and has not approached this Hon'ble Court with clean hands. Further, the subject matter need to be dealt by a Competent Court in the nature of partition rather than succession. Hence, the relief sought by the plaintiff is not maintainable either in law or on facts and is liable to be dismissed in limine.

4. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

(1) Whether the Will, dated 17.03.2008, is true and genuine?

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



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5.On the side of the Plaintiff, Ex.P1 to Ex.P10 were marked and PW.1 to PW.3 were examined. On the side of the Defendant, no documentary evidence was marked and DW.1 was examined.

6.The learned counsel for the plaintiff would submit that the Ex.P3-Will dated 17.03.2008 was executed by Testatrix Late Mrs.Suguna Bhushanam and the same was registered in the SRO, Virugambakkam being attested by PW.2 and PW.3. Since the Testatrix had studied upto 6th standard, she knew to read and write in English, it does not matter with regard to the Will was typewritten in English and the Testatrix had signed the Will in English. On executing the Will, the Testatrix was in a sound mind and physically fit and the same can be seen in the evidence of P.W.2 that 10 days prior to the execution of Will, the Testatrix had gone to PW.2's house climbing the staircase on the 1st floor seeking her to sign in the Will and she used to go to Bellary to stay with her 2nd son ie. T.R. Poorna Chandran Rao by changing trains at Guntackal. While being so, the Defendant tried to project as though the Testatrix was a blind woman because Cataract surgery underwent by the Testatrix got failure. Regarding the eye surgery, it was never taken in the Written Statement and cross



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examination of PW.1 by the defendant. Since there was animosity with defendant, the Testatrix did not attend the betrothal and marriage function of the elder daughter of the defendant including her brothers.

7. It has been further submitted by the learned counsel for the plaintiff that after making the entire sale consideration of Rs.9,000/- to the Vendor , the Testatrix had purchased the said property in her favour. Hence, it cannot be considered that the property was purchased by the husband of the Testatrix since she had no source of income for purchasing the said property.

8. The learned counsel for the plaintiff would further submitted that the Will has been executed before an Authority constituted under the relevant statute. ie. Registration Act, with necessary Animus Attestandi. Therefore, while the presumption under Section 114 of Indian Evidence Act comes into play, the defendant has not let in any single evidence to refute the same. Hence, he prays to allow the suit and grant probate to the Will dated 17.03.2008 executed by the Testatrix.



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9. The learned counsel for the defendant would submit that the Testatrix had no source of income and the father of the plaintiff and the defendant herein had purchased the said property in his wife's name. Hence, she has no right to dispose of the same through a Will. Without submitting the details of movable properties such as Jewels and Silver articles belonged to the Testatrix, the Plaintiff is trying to grab the house with land by filing the Original Petition seeking for the grant of probate to the said Will.

10. It has been further submitted by the learned counsel for the defendant that since the deceased Testatrix had discontinued 6th standard in Telugu Medium, she is not having great acquaintance in English nor capable of signing in cursive English which is an outcome English Medium coaching. Further, since the Testatrix being aged about 75 years underwent eye surgery during the year 2005, she was not able to properly see, read and write as the operation was not successful. After eye operation, the Testatrix used to seek the help of others for walking and for other needs. While being so, it is not possible to execute the said Will in the registration office. Hence, the said Will is bogus and fabricated one.



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11. The learned counsel for the defendant would further submit that one of the brother ie. T.R. Chinni Krishnan left India long back to US and did not come to India even for the death of the mother and his whereabouts are not known to anybody except the plaintiff and alleged affidavit is also not established in a manner known to law. Further, as the attesting witnesses are neighbours and well acquainted with the plaintiff, they are interested witnesses in the suit. The subject matter of the suit is related to intestate jurisdiction since the property will have to be shared equally between the plaintiff and defendant and his brothers rather than testamentary one. Thus, the plaintiff has approached this Court with unclean hands, he prays to dismiss the suit.

12. Heard both sides and perused the materials available on record.

13. A perusal of the Will dated 17.03.2008 ie Exp3, it can be seen that the said Will was registered on the file of the SRO, Virugambakkam having signed by the Testatrix and attested by two Attesting Witnesses. While there is Animus Attestandi in the Will, during the Trial, two attesting witnesses have been examined as P.W.2 and P.W.3 in which they have also



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confirmed the Will dated 17.03.2008 executed by the Testatrix. When the evidence of the attesting witness P.W.2 and P.W.3 is perused, it would speak to the effect that they were present on the day of execution of the Ex.P3-Will on 17.03.2008 and they saw the testatrix, putting her signature in the Will and the testatrix saw them putting their signatures as witnesses and thereby she has also spoken about the attestation of the document, in accordance with law. The evidence of P.W.2 and P.W.3 would also go to show that the testatrix was in a sound and disposing state of mind and was in a good health, at the time of execution of Ex.P3 Will. The testamentary jurisdiction is invoked only for the purpose of deciding the proof of the Will in order to grant of probate.

14. Even though the defendant has raised with regard to the Testatrix has no source of income to purchase the property, she had not produced any oral and documentary evidence to prove the same. However, the said property was in the name of the Testatrix by virtue of Sale Deed dated 22.12.1979 executed by the Vendor for sale consideration of Rs.9,000/-. Hence, it is admitted fact that the Testatrix is the owner of the property. Even though the defendant has raised the doubt in the signature of the



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Testatrix since she was illiterate and discontinued her studies in 6th standard, the defendant is bound to prove the same either by producing any supporting document or examining the oral evidence to refute the signature of the Testatrix written in English in the said Will. In the event of failure to produce the oral and documentary evidence on the side of the defendant during the hearing to prove the said Will as fake and fabricated one, the plaintiff has proved the Will dated 17.03.2008 by producing oral and documentary evidence in the manner known to law. Accordingly, Issue No.1 is answered. Since issue no.1 is answered in favour of the Plaintiff, issue no.2 also is answered in favour for the plaintiff and hence he is entitled to grant of probate with Will dated 17.03.2008 and all other relief as prayed for.

15. In the result, the Testamentary Original Suit is allowed. No Costs.

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Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
Lbm



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1. List of Witnesses examined on the side of the Plaintiff:-

1. PW.1 – Mr. T.R. Venkata Ramana Rao
2. PW.2 - Mrs. Manimeghalai
3. PW.3 - Mr. M. Krishnamoorthy

2. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the original legal heirship certificate of T.R. Suguna Bhushanam dated 12.08.2013.
2. Ex.P2 is the photocopy of the Sale Deed in favour of the deceased/Testator dated 22.12.1979.
3. Ex.P3 is the Original Will dated 17.03.2008 (in safe custody).
4. Ex.P4 is the printout of the death certificate of T.R. Suguna Bhushanam dated 07.01.2013.
5. Ex.P5 is the photocopy of the Aadhaar Card
6. Ex.P6 is the signature of Manimeghalai found in the reverse page of the 1st page of the Ex.P.3.
7. Ex.P7 is the first signature Manimeghalai found in the 3rd page of the Ex.P.3 as attesting witness.
8. Ex.P8 is the photocopy of the Aadhaar Card.
9. Ex.P9 is the signature of Krishnamoorthy found in the reverse page of the 1st page of the Ex.P.3 is marked as Ex.P9.
- 10.Ex.P10 is the the signature of Krishnamoorthy found in the 3rd page of the Ex.P.3 is marked as Ex.P9.



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3. List of Witness examined on the side of the Defendant:-

DW.1 – Mr. Asha Latha

4. No list of Exhibits is marked on the side of the Defendant:-

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A.A.NAKKIRAN, J.

Lbm

Pre-Delivery Judgement in
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