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O.S.A.No.150 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

O.S.A.No.150 of 2008

Rajendran

.. Appellant

Versus

1.Miss T.C.Ammini

2.Moovendar Colony Service Association,
Rep. By its Secretar Mr.L.Ramajayam,
Muthalamman Koil Street,
West Mambalam, Chennai – 33

.. Respondents

Prayer: Original Side Appeal has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 27.04.2007 passed in T.O.S.No.22 of 1998 (O.P.No.1075/1997) by the learned Single Judge of this Court.

For Appellant : Mr.G.Thangavel

For R1 : Mr.Chinna Vyram

For R2 : No Appearance



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O.S.A.No.150 of 2000

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appeal is at the instance of the second defendant in T.O.S.No.22 of 1998.

The said application under Sections 232 and 276 of the Indian Succession Act was originally filed as an Original Petition and was converted into as a Testamentary Original Suit upon caveat being lodged by the first defendant in the suit.

2. The plaintiff/first respondent herein sought for Letters of Administration of the Will dated 03.05.1994, said to have been executed by one Dhanamani @ Dhanamani Lakshmi, who died on 19.05.1994, contending that the Will was executed by the deceased in a sound disposing state of mind in the presence of two attesting witnesses, who saw her affixing her signature in the testamentary instrument and they affixed their signature to the said instrument in her presence. The association of residents of Moovendar Colony was made as first defendant. The second defendant/appellant herein had impleaded himself as a heir of Dhanamani Ammal, being her brother's son.

3. The plaintiff examined herself as P.W.1 and examined one of the attesting witnesses of the Will by name G.Viswanathan as P.W.2 and the Will was marked as Ex.P2. Exs.P1 to P15 were marked on the side of the plaintiff. While one



Kannadasan, representative of the first defendant association, was examined as D.W.1, the second defendant himself was examined as D.W.2. Exs.D1 to D19 were marked on the side of the defendants.

4. The application was resisted mainly on the ground that there were suspicious circumstances, inasmuch as Dhanamani Ammal was hospitalised from 04.05.1994 and she died at Apollo Hospital on 19.05.1994. This circumstance, namely, hospitalisation on the very next day is projected as suspicious circumstance. It is also claimed that plaintiff, who was a maid servant working for Dhanamani Ammal, had prevailed upon her to execute the Will in her favour ignoring her other legal heirs.

5. The learned Single Judge framed the following issues for determination on the basis of the above pleadings:-

i) Whether the deceased Dhanamani Lakshmi had executed the Will dated 03.05.1994 while she was in a sound disposing state of mind?

ii) Whether the plaintiff is entitled for issuance of a Letters of Administration?



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6. Upon consideration of the evidence on record, learned Single Judge concluded that the claim that the Will was executed in suspicious circumstances, when Dhanamani Ammal was not in a sound disposing state of mind has not been made out. The learned Single Judge accepted the evidence of P.W.2-attestor as regards the execution of the Will and concluded that the plaintiff is entitled to Letters of Administration to the Will annexed. Hence, this appeal.

7. We have heard Mr.G.Thangavel, learned counsel appearing for the appellant and Mr.Chinna Vyram, learned counsel appearing for the first respondent. Learned counsel for the second respondent is absent. However, the second respondent has accepted the judgment of the trial court and has not filed an appeal against the same.

8. Mr.G.Thangavel, learned counsel appearing for the appellant, would vehemently contend that the very fact that the testator was hospitalized the very next day of the execution of the Will is sufficient proof of suspicious circumstance, that surrounded the execution of the Will. He would also point out that the Will has been made in favour of a maid servant when there were other legal representatives available.



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9. On the contrary, Mr.Chinna Vairan, learned counsel appearing for the first respondent, would vehemently contend that the evidence of P.W.2 complies with the requirements of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. Once the plaintiff has satisfied the legal requirements by examining P.W.2, it is for the defendant, who attempts to derail the Will, to prove the existence of suspicious circumstances by credible evidence. Drawing us to the cross-examination of P.W.1 and P.W.2, learned counsel would submit that there is not even a suggestion regarding the mental condition of the deceased Dhanamani Ammal-testatrix on 03.05.1994. It has not been brought out that she has suffered from some illness, which had an effect on her mental faculties. The reason for the death also has not been brought out so as to enable the Court to venture into the question of mental condition of Dhanamani Ammal at the time of execution of the Will.

10. We have gone through the cross-examination of P.W.1, P.W.2 and the evidence of D.W.1. There is nothing in the evidence to even suggest that Dhanamani Ammal was affected by some kind of illness, which had affected her mental facility, and she could be said to have been not in a sound disposing state of mind. The evidence of P.W.2 in chief examination very clearly sets out the circumstance under which the Will came to be made. There is nothing in the cross-examination to



destabilize the evidence in chief examination. Even though D.W.2 is a brother's son of Dhanamani Ammal, he was not available in Chennai during the time of execution of the Will. Therefore, he is not a competent witness to speak about the execution of the Will. The entire evidence on the side of the defendants is wholly misdirected and it is only related to the happenings after the death of Dhanamani Ammal and no attempt has been made to bring out her state of mind on 03.05.1994 when the Will was said to have been executed.

11. The learned Single Judge has pointed out that in the absence of evidence to show that Dhanamani Ammal's mental faculties were affected, the evidence of P.W.2/one of the attestors of the Will, will have to be accepted and once the evidence of P.W.2 is accepted, as the the Court of limited jurisdiction dealing with the issue of Letters of Administration, the Court cannot presume that Dhanamani Ammal's health was so affected that her state of disposition was not good on the date of execution of the Will. Moreover, P.W.2, one of the attestors of the Will by name G.Viswanathan, is neither a relative of Dhanamani Ammal the testator and he is also not known to legatee/plaintiff. There is nothing suspicious to impute any motive of P.W.2 to have participated in the creation of the Will.



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12. For the foregoing reasons, we see no reason to differ from the conclusions of the learned Single Judge. The appeal, therefore, fails and it is dismissed accordingly. No Costs. Connected M.P.No.1 of 2008 is closed.

(R.S.M., J.) (R.K.M., J.)
10.07.2023

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Index:yes/no
Speaking/Non-speaking
Neutral citation: yes/no



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and
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