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T.O.S.No.21 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.06.2024

Judgment Pronounced on : 07.06.2024

CORAM : JUSTICE N. SESHASAYEE

T.O.S.No.21 of 2003

1.Mitchel Daniel (Decd.) Petitioner in O.P.No.467 of 2001
2.B.S.Coil Pillai Petitioner / Plaintiff

[Transposition of B.S.Coil Pillai (the first [1st] respondent in O.P.No.467 of 2001 /first [1st] defendant in T.O.S.No.21 of 2003) in the place of late.M.Mitchel Daniel as petitioner, as per order of Court dated 24..02.2004 in Application No.133 of 2004 in T.O.S.No.21 of 2003]

Vs

1.Dr.Vimala Samuel
2.Lalitha Balachander Caveators / Defendants

Prayer : Petition filed under Section 222 & 276 of the Indian Succession Act, XXXIX of 1925 for grant of probate.

For Plaintiff / : Mr.S.Haja Mohideen Gisthi
Petitioner

For Caveators / : Mr.R.Thiagarajan
Defendants



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JUDGMENT

The suit is laid for probate by the Executor of a registered Will executed by a certain Eva R.Coil Pillai on 22.03.1976.

2 A summation of the case of the plaintiff may be briefly stated :

- Eva R.Coil Pillai, the testatrix, had a daughter, the first defendant herein, and a son who is now the plaintiff. Besides, she brought up another girl as her own daughter. She is Lalitha. Eva Coil Pillai died on 12.07.1991, and her husband had pre-deceased her .
- Earlier, on 22.03.1976, some 15 years before her demise, Eva R.Coil Pillai had executed a Will, bequeathing her only property to her son, but to the exclusion of her daughters which included her foster daughter. In the Will, she had appointed a certain Mitchel Daniel as the executor. Mitchel Daniel (1st plaintiff) is the father-in-law of the testatrix's only son, the second plaintiff herein. The Will was a registered one.
- For probating the Will, the executor has instituted OP.No.467/2001. During the pendency of the proceedings, the executor died on



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16.08.2003. It is in these circumstances, vide an order of this Court dated 24.02.2004 in A.No.133/2004, the beneficiary under the Will (initially the first respondent in OP.No.467 of 2001) was transposed as the second plaintiff.

- Both the daughters of Eva Coil Pillai have filed their caveat, whereupon the proceeding was converted into a suit.

3. In the written statement filed by the first defendant and adopted by the second defendant, it is alleged:

- a) The Will is bristled with factual inaccuracies. The second defendant was the foster daughter of the testatrix, and the Will does not make relevant reference to it. There are also inaccuracies vis-a-vis the date of marriage of the second defendant, and the quality of first defendant's matrimonial life. This apart, the Will also requires the executor of the Will to settle the loans of the testatrix, whereas the testatrix was a superannuated medical Officer of the City Corporation, and was receiving pension. This apart, she also received family pension of her late husband. And she had her own house in Coimbatore where she lived.
- b) The Will has excluded both the biological daughter as well as the foster



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daughter of the testatrix. Even though the Will tries to explain why these defendants were excluded from the bequeath, the reasons given are plainly artificial and bristled with certain factual inaccuracies. Indeed, the Will recites about the second defendant's love affair to a certain Balakrishnan as a reason to exclude her, but it was the testatrix who had organised the marriage of the second defendant.

- c) The executor has filed the petition for probate a decade after the demise of the testatrix, and it adds to the suspicion that shrouds the Will.
- d) Eva Coil Pillai did not have a comfortable life. First, she was abused and ill-treated by her husband, and later she was abandoned by her son, the sole legatee under the Will. In her later days she had been residing in a Senior Citizen Home at Madurai. The Will is a product of collusion between the son – father-in-law combination and it was not executed in the free will of the testatrix.
- e) The testatrix was living in her own house, but the testatrix's son did not treat her well as a result of which she took shelter in home for the aged at Madurai, before returning to Coimbatore due to failing health and later died.



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4. On the above pleadings, following issues are framed :

- (a) Whether the Will dated 22.3.1976 is true and genuine and it was duly executed and validly attested, while the testatrix was in sound and disposal state of mind?*
- (b) Whether the execution of the impugned Will is vitiated by suspicious circumstances and it came into existence under the undue influence?*
- (c) Whether the suit is barred by limitation?*
- (d) Whether the plaintiff is entitled to Letters of Administration?*
- (e) To what relief, the plaintiff is entitled to?*

5. For discharging the burden, the propounder of the Will is examined as P.W.1. Both the attestors of the Will were examined as P.W.2 and P.W.3. To substantiate the preponderating probability of the genuineness of the Will, the plaintiffs have produced as many 18 documents, of which, Ext.P1 is the impugned Will. For the defendants, the first defendant examined herself as D.W.1 and the second defendant as D.W.2. The defendants have produced Ext.D1 to Ext.D7.



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6. This Court is informed that, earlier this matter came before another learned Single Judge for arguments and at that stage, the counsel for the defendants, who was uptill then appearing for both the defendants, had made a statement on instructions that the second defendant is not willing to contest the matter any longer. Mr.R.Thiagarajan, learned Senior Counsel appearing for the defendants again made a statement that he stands by his earlier statement, and since that statement was not recorded by the Court earlier, it may now be recorded.

7. Mr. Haja Mohideen Gisthi, the learned counsel for the plaintiff submitted that the defendants have not disputed the execution of Ext.P1 Will, but have only challenged its genuineness on two grounds: (a) that it was obtained under coercion and undue influence; and (b) that the execution is shrouded in suspicion since the natural heirs of the testatrix, which included the second defendant besides her biological daughter, were not included in the Will. Arguing further he contended:

- i. The daughters were not on cordial terms with the mother, and necessarily they were excluded. This is established by Exts. P9, P10 and P12 letters addressed by the 1st defendant to the testatrix between 01.06.1980 and



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26.05.1995, and Ext. P11 letter which the 2nd defendant, dated 04.07.1991, had written to the testatrix. Not one of these letters were denied, nor their contents disputed.

- ii. So far as coercion and undue influence in executing the Will are concerned, the only allegation is that the father-in-law of the plaintiff was appointed as the executor. A mere choice of the person who was appointed as an executor of the Will by itself is inadequate to suspect the genuineness of the Will. Indeed midway through the trial, the plaintiff had produced Exts.P16, P17 and P18. They are draft Wills which the testatrix had prepared earlier to the execution of Ext.P1 Will, and the signatures of the testatrix in them had not been denied. While the cause of action for the suit is not founded on them, yet it could be seen that even in those documents the testatrix was seen contemplating bequeathing her property only to the plaintiff to the exclusion of the defendants.

8. Per contra, the learned counsel for the defendants submitted:

- a) The executor under the Will is none other than the father-in-law of the legatee, the son of the testatrix, and it lends strong suspicion to the



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execution of the Will as to whether the Will was an outcome of the free will of the testatrix. Even though the Will is registered, that is no insurance against the genuineness of the Will. Reliance was placed on the ratio in *Thankam alias Karthiyani Vs C. Madhavan* [1992 (2) MLJ 634].

- b) So far as the suspicious circumstance is concerned, it has come out in evidence that the testatrix had executed the Will several years before her demise and that it was executed more as a consideration for the executor to give his daughter in marriage to the legatee. In other words, there is no free will, but there is a kind of duress applied on the testatrix to part with her estate as a consideration for the executor to give his daughter in marriage to the legatee.
- c) The plaintiff relied on few letters, which the daughters had written to their mother, but they were dated few years after Ext.P1, and they are not of any consequence when the genuineness of Ext.P1 is under scrutiny. There is nothing on record to indicate that both the mother and the daughters were not on cordial terms at the time of execution of the Will. And, even if Exts.P9 to P12 were scrutinised for their



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evidentiary value otherwise, they only convey daughters' disappointments over something which the mother had done, but is it not normal in any family? Whether instances such as this imply that the mother and daughters have become inimical permanently?

- d) The probate proceeding is laid belatedly, some eleven years after the demise of the testatrix.

9. Rival submissions are carefully evaluated. Turning to proof of Ext.P-1, the plaintiff has examined P.W.2, one of the attesting witnesses to Ext.P1. P.W.2 is an advocate, and at the relevant time when Ext.P1 was executed, he was a junior to the counsel who drafted the Will. His testimony is consistent on the execution of the Will, and the defendants could not create a dent in his testimony. It is seen that during the cross examination of P.W.2, the defendants seem to project a case of testatrix's health status at that time, something which they did not plead, nor was the same confronted to P.W.1 when he was examined.

10.1 With defendants not choosing to contend that Ext.P-1 Will is a fabrication, the only point which is required to be probed is, whether there is a



preponderating probability to suspect the genuineness of the Will owing to (a) coercion and undue influence of the plaintiff and his father-in-law; (b) exclusion of the defendants from the legacy.

10.2 On the first aspect, coercion and undue influence cannot go together. Indeed they are opposites. The cross examination of P.W.1 does not indicate that the defendants had brought out any material from which the court can form an opinion on any of these alleged vitiating elements. The mere fact that the testatrix had chosen to appoint the father-in-law of the plaintiff as the executor does not ipso facto imply that the Will could be suspected. It is a choice which the testatrix had made merely.

10.3 What however, is of significance is the date of the Will. It was executed on 22.03.1976. And the testatrix had died only in 1991. In other words, she lived for fifteen long years since she executed the Will. There is no evidence that she was under sustained coercion from the date of execution of Ext.P1 Will that she could not change her Will. In other words, when the testatrix had all the time and opportunity to cancel or change or modify her Will, she chose not to do it. During trial, the 2nd defendant has produced Exts. D1 and D2 letters,



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written by the testatrix to the former. These letters were written anywhere between a month and few weeks before the testatrix died. In these letters, the testatrix had indicated that she had been missing the second defendant. And it was written coherently in a fluent hand. They indicate that the testatrix was conscious and was able almost till her end.

11. The next aspect is about the exclusion of the daughters while granting a legacy under Ext.P1. Ordinarily exclusion of a natural heir from inheriting under a Will without a reason is considered as a vitiating circumstance affecting the genuineness of the Will, but it depends on the facts and circumstances of each particular case. A testator with absolute right to deal with his estate, has absolute right of choice to decide to whom his property should go after his death. Therefore, merely because the testatrix in the present case had chosen her son for the bequeath to the exclusion of daughters by itself does not affect the genuineness of the Will. Of the two defendants, the second defendant has chosen to give up her contest midway. This leaves only the exclusion of the first defendant in the Will for consideration. The Will recites that she was happily married and settled. It may be that her matrimony might have turned sour later, but what this Court is now concerned about is the state



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of affairs as of the date of Ext.P1.

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12. Arguments were advanced that the plaintiff had dumped his mother in a home for senior citizens in Madurai, but then the daughters too were no different. They could have cared their mother if they wanted to. Therefore, what had happened several years after the execution of the Will cannot be telescoped backward to upset the genuineness of the Will.

13. This court accepts the arguments of the counsel for the defendants that Exts.P9 to P12 are but letters from daughters to mother and hence merely because the daughters have made some statements expressing their disappointment over the mother, the same does not ipso facto imply that their relationship must be understood as irretrievably broken. But Ext.P10 did indicate that the first defendant carried some strong views against her mother. But as correctly argued by the counsel for the defendants they reflect a state of affairs few years after the execution of the Will, and hence do not carry any significant evidentiary value for evaluating the genuineness of the will. Indeed, it conveys the first defendant's perception that her mother had preferred her son more than the former. This statement may not be adequate to



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conclusively prove that the testatrix had not intended to treat her children equally, but even if it is kept aside, the genuineness of the Will remains unaffected.

14. One aspect which drew the attention of the Court relates to Exts.P16 to P18, all of which are stated to be draft wills. They are dated respectively 26.02.1975, 02.10.1975 and 20.03.1976. All the three were seen to have been executed fully with the attesting witnesses affixing their signatures. But they carry lot of corrections, which in one sense may affect their genuineness but not the execution. Of these three documents, Ext.P18 was dated two days prior to the date of Ext.P1 Will, but the same is not recited in Ext.P1. Whether non disclosure of the earlier Will, will affect the genuineness of the subsequent Will? It depends on the facts of the case. So far as the present case is concerned, given the fact that Ext.P1 Will has been proved in accordance with Sec.68 of the Evidence Act, and given the fact that it is also found to be free of any suspicion, the mere non reference to earlier Will or draft Will in Ext.P1 cannot affect its genuineness. It requires to be emphasised here that the testatrix lived for a solid 15 years after the execution of the Will, and she did not choose to cancel or amend it. Secondly, even if Ext.P18 is perused, the



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bequeath has been only to the plaintiff, and the daughters of the testatrix had been excluded. The only difference is that while in Ext.P1, the testatrix had appointed an executor, in Ext.P18 she had not. But then it is her choice and this Court cannot expand it to suspect the genuineness of Ext.P1 Will.

15. Looking from every conceivable angle, this Court finds that there is hardly any material to suspect the genuineness of Ext.P1 Will and the same is hereby probated. Accordingly, the testamentary original suit is decreed. There shall be no order as to costs.

07.06.2024

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
ds



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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
P.W.1	B.S.Coil Pillai
P.W.2	S.Sundaragopal
<i>Defendants :</i>	
D.W.1	Dr.Vimala Samuel
D.W.2	Lalitha Balachander

II. Exhibits :

Ext.P1	22.03.1976	Original Registered Will
Ext.P2	10.12.1972	Registered Regular Loan Mortgage Deed for Rs.20,000/-
Ext.P3	17.03.2010	Copy of the marriage certificate of Mrs.Vimala Anne Dhanmayanthi (1st defendant)
Ext.P4	20.08.1975	Marriage Invitation by the plaintiff
Ext.P5	17.03.2010	Copy of the Marriage Certificate of Lalitha Grace (2 nd defendant)
Ext.P6	22.07.1991	Death Certificate of Mr.Eva.R.Coil Pillai, who died on 12.7.1991
Ext.P7	22.06.1979	Death Certificate of Mr.J.A.Coil Pillai, who died on 102.06.1979
Ext.P8	30.11.1979	Legal Heirship Certificate issued to the LRs of J.A.Coil Pillai
Ext.P9	01.06.1980	Original Letter written by Dr.Vimala Samuel (first defendant) to her mother
Ext.P10	18.07.1989	Original Letter written by Dr.Vimala Samuel (first defendant) to her mother
Ex.P11	04.07.1991	Original Letter written by Mrs.Lalitha Samuel (second defendant) to her mother, Mrs.E.R.Coil Pillai
Ex.P12	26.05.1995	Original Letter written by Dr.Vimala Samuel (first defendant) to Bhaskar
Ex.P13	18.01.2001	Original Loan Sanction Letter addressed to Mr/Mrs.Coil Pillai by Integrated Enterprises (India) Ltd., approving home loan



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Ex.P14	17.01.2001	Photocopy of letter from ICICI Home Fin to B.S.Coil Pillai / Leela Coil Pillai
Ex.P15	09.04.2001	Photocopy of the letter addressed to Mr.B.S.Coil Pillai by ICICI Limited
Ex.P16	26.02.1974	Original first draft of the Will of Mrs.Eva R.Coil Pillai
Ex.P17	02.10.1975	Original second draft of the Will of Mrs.Eva R.Coil Pillai
Ex.P18	02.03.1976	Original second draft of the Will of Mrs.Eva R.Coil Pillai
Defendants :		
Ext.D1	21.06.1991	Original Letter from Mrs.Eva R.Coil Pillai to Lalitha Balachander (second defendant0
Ext.D2	07.06.1991	Original Letter from Mrs.Eva R.Coil Pillai to Lalitha Balachander (second defendant0
Ext.D3		Photographs
Ext.D4	28.12.1977	Photocopy of marriage invitation of Lalitha (second defendant)
Ext.D5	04.04.2021	Letter issued by the President, Bishop Gnanadhasan Home for the Aged certifying that Mrs.Eva Coil Pillai was the resident of "Shalom Garden" during the period 31.10.1991 to 18.06.1991.
Ext.D6	21.03.1973	Original Letter to the first defendant
Ext.D7	28.03.1979	Original Letter to the first defendant

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N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
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