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T.O.S No.42 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.04.2024

DELIVERED ON: 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

T.O.S No.42 of 2010
(O.P No.362 of 2010)

S.Kumaresh

... Plaintiff

Vs

1.Uma Elangovan

2.Sanjeevi S.Chetty

(2nd Defendant impleaded as per order
in Appln.No.6657 of 2019 dated
12.09.2019 and time extended by
order dated 12.11.2019)

... Defendants

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 5 of the Original Side Rules 1956, for the grant of Letters of Administration in respect of the Last Will and Testament of the deceased K.Subramania Chetty. As per order of this court, the Original Petition No.362 of 2010 has been converted into Testamentary Original Suit No.42 of 2010.



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For Plaintiff : Mr.B.S.Jhothiraman
For Defendants : Mr.P.Sesubalan Raja
for 1st defendant
Mr.Sudit Anant Palande
for 2nd defendant

J U D G M E N T

The Testamentary Original Suit, initially filed as O.P.No.362 of 2010, seeks grant of Letters of Administration in respect of the last Will and Testament of Late K.Subramania Chetty dated 13.02.1997.

2. The brief facts of the case of the plaintiff are as follows:-

The father of the plaintiff, K.Subramania Chetty died on 03.10.2005, leaving behind an unregistered Will dated 13.02.1997. The wife of the testator, Mrs.K.S.Dhanalakshmi also died on 20.01.2006. The testator died leaving behind his children viz., the plaintiff, the first defendant, daughter and another son viz., the second defendant.



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3. According to the plaintiff, he came to know about the existence of the Will only in June 2007 and there is no occasion for him to know about the said Will at any earlier point of time. The plaintiff, being one of the beneficiaries, seeks grant of Letters of Administration with the said Will annexed.

4. The daughter of the testatrix filed a caveat opposing the grant of Letters of Administration and pursuant to the Original Petition being converted into Testamentary Original Suit, the daughter filed a written statement stating that the Will is a forged instrument and the Will came to see the light of the day only after five years from the date of demise of the father. The 1st defendant/daughter also stated that the two sons, who are major beneficiaries, have colluded between themselves to achieve the illegal design. She has also stated that as the plaintiff was not in cordial terms with the father and that only she had been looking after her father till his demise and her father was very affectionate to all the children. During the life time of K.



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Subramania Chetty, as there was no cordial terms between him and his elder son, the plaintiff herein, he had asked the plaintiff to move to the first floor portion of the house and was called upon to pay rent during the life time of the father. The Will is silent about the grandchildren of the testator, who are only through the first defendant, not through the plaintiff or the second defendant. The first defendant has also contended that the Will does not indicate that it was written by a person having three children and has further alleged that the witnesses to the Will are close to the plaintiff and that they have also attested the Will only to help the plaintiff.

5. The other son of the testator got himself impleaded pending proceedings, as second defendant. He has filed a written statement stating that his father had kept all the important documents in safe custody and only after the demise of the mother in January 2006, when a search was made in the year 2007, a suit case, containing the Will executed by the father was found. The plaintiff had served a copy of the Will to both the defendants and however, the first defendant refused to accept the Will and demanded 1/3



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equal share in the immovable property. The second defendant has also stated that his father has bequeathed NRI bonds of a face value of \$15,000/- in favour of the first defendant and has also made other religious bequests which are to be fulfilled.

6. The plaintiff filed a reply statement to the written statement filed by his sister viz., the first defendant, denying the allegation that the plaintiff was not in cordial terms with the father and that he was asked by the father to shift to first floor of the property and was also called upon to pay rent during the life time of the father and that he moved to the first floor on payment of rent of Rs.5,000/-. In fact, the plaintiff has contended that he moved to the first floor only to pave way for his brother, who was getting married, to live in the ground floor along with parents and the allegations in the written statement to the contra were stoutly denied. The plaintiff has further stated that the witnesses are neither family friends nor close relatives and in fact, the first defendant herself knew one of the witnesses viz., C.A.Srinivasan, who was a good family friend of his father and the second



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attesting witness was an advocate who was not even acquainted with the plaintiff. The plaintiff, therefore, prayed for the Testamentary Original Suit to be decreed.

7. On 11.07.2019, this Court framed the following issues:-

i) Whether the Will dated 13.02.1997 said to have been executed by late K.Subramania Chetty is true and valid?

ii) Whether the plaintiff is entitled to grant Letters of Administration with the copy of the Will annexed?

iii) To what other reliefs the parties are entitled?

8. The plaintiff examined himself as P.W.1 and the second attesting witness No.2 viz., Mr.S.Sukumar has been examined as P.W.2. Through P.W.1, the following documents were marked as exhibits:-



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S.No.	Exhibits	Date	Description
1.	P-1	03.10.2005	Original Death Certificate of K.Subramania Chetty
2.	P-2	20.01.2006	Original Death Certificate of K.S.Dhanalakshmi
3.	P-3	13.02.1997	Original Unregistered Will executed by Testator Subramania Chetty
4.	P-4	...	Original Affidavit of Assets
5.	P-5	10.04.2017	Computer Generated Copy of the Death Certificate of C.A.Srinivasan
6.	P-6 series		Original Affidavit of attesting witness namely C.A.Srinivasan (counsel for defendant raised objection for marking this document stating that deponent is passed away so it's veracity cannot be ascertained.)
7.	P-7	07.03.2006	Original Legal Heir Certificate of deceased Subramania Chetty
8	P.8	...	Signature of P.W.2 at page 6 in Ex.P.3Will
9	P.9	...	Affidavit of attesting witness CA Srinivasan
10	P.10	..	Printout copy along with savings bank account details of Mr.Subramania Chetty
11	P.11	..	Inventory of Locker No.H-41 of Subramania Chetty and K.S.Dhanalakshmi



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9. Apart from the attesting witnesses, the plaintiff has also examined P.W.3, the Branch Manager, State Bank of India, Anna Nagar Branch; P.W.4, Assistant General Manager (Deposits) in Sundaram Finance Limited, Chennai-02; P.W.5, employee of ICICI Bank, Anna Nagar Branch; P.W.6, Assistant Superintendent of Post Offices, Chennai City North Division, Anna Nagar, Chennai-600 040 and P.W.7 one S.Gopinath, who is the son of C.A.Srinivasan/the first attesting witness. All the plaintiff's witnesses have been cross examined in detail by the learned counsel for defendants.

10. I have heard Mr.B.S.Jhothiraman, learned counsel for the plaintiff, Mr.P.Sesubalan Raja, learned counsel for the first defendant and Mr.Suchit Anant Palande, learned counsel for the second defendant. I have also gone through the oral and documentary evidence adduced by the parties.

11. The relationship between the parties is admitted and not in dispute. The factum of demise of father K.Subramania Chetty on 03.10.2005



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and mother K.S.Dhanalakshmi on 20.01.2006 are also admitted. The only contentious issue is the factum of execution of the Will by the father on 13.02.1997. The said Will has been marked as Ex.P.3, which is an unregistered Will. The Will has been attested by two witnesses viz., Mr.C.A.Srinivasan and Mr.S.Sukumar. The Scribe Mr.K.A.Ramakrishnan, Advocate has also signed the Will at the last page besides affixing his seal. It is seen from in the Will that it is signed in all six pages by the testator. However, the specific contention of the first defendant is that the signature found in Ex.P.3 Will is not the signature of the father and the plaintiff, in connivance with the other brother of the first defendant viz., the second defendant, has forged and concocted Ex.P.3 Will. In support of execution and attestation of Ex.P.3 Will, the plaintiff has examined the second attesting witness P.W.2 and also the son of the first attesting witness as P.W.7.

12. P.W.2 in his examination in chief has stated that he is a practising advocate and that he met the testator at his Senior's office viz., Mr.K.A.Ramakrishnan, Advocate, who is the Scribe of the Will. He has



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further asserted that that the testator was a client of his senior Mr.K.A.Ramakrishnan and that the testator signed the Will after reading the same and thereafter Mr.Srinivasan and himself had attested the Will. He also stated that the corrections found in the Will were carried out by the testator himself and the corrections were also counter signed by the testator. He has been cross examined at length by the learned counsel for the first defendant.

13. The cross examination of P.W.2 does not bring about anything to support the case of the first defendant that the Will is a forged document. In fact, in cross examination, P.W.2 has stated that at the time of attesting the Will, he was only a law student, attached to Mr.K.A.Ramakrishnan's office. Mr.K.A.Ramakrishnan is the Scribe of the Will and P.W.2 has affirmed that the Will was prepared by his Senior K.A.Ramakrishnan and it was signed in his presence.

14. P.W.7, S.Gopinath has stated in chief examination that he is the son of Mr.Srinivasan. He has confirmed that his father viz., Srinivasan was



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acquainted with the family of K. Subramania Chetty as they are classmates in Engineering College. He has been able to identify the signature of his father, Srinivasan in Ex.P.3 Will and also in Ex.P.6, affidavit of attesting witness. He has further stated that his father died on 10.04.2017. He has also stated that the first defendant's betrothal ceremony was conducted only in his house and that he also attended the wedding of the first defendant at Hotel Palmgrove.

15. In cross examination, he has stated that he attended the death of K.Subramania Chetty/testator along with his family. To a specific question that the plaintiff did not give a copy of the Will to him, he has stated that he knows his father's signature and there is no change in his father's signature from the date of P.W.7's schooling and that it is very tough to forge the signature of his father. He has also stated that the testator was his father's classmate and they were good friends.

16. From the evidence of P.W.2 and P.W.7, I am satisfied that the



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plaintiff has proved due execution and attestation of Ex.P.3 Will in accordance with Section 63(c) of Indian Succession Act, 1925. Though the first defendant has contended that both the attesting witnesses were close associates of the plaintiff, it has come out in evidence very clearly that the first attesting witness was the classmate of the testator himself and the second attesting witness was attached to the Advocate, who drafted the Will. Therefore, it clearly falsifies the defence set up by the first defendant that both the witnesses are stage managed and they are close to the plaintiff only. Therefore, I have no hesitation in upholding the due execution and attestation of Ex.P.3 Will.

17. The next question which falls for consideration is as to whether the delay in approaching the Court, seeking grant of Letters of Administration would be fatal to the case of the plaintiff and whether there are any suspicious circumstances that need to be dispelled by the plaintiff before the burden stands shifted to the defendants to prove the allegation of forgery.



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18. Insofar as the delay is concerned, the plaintiff has specifically averred in the petition that the Will was found for the first time only in June 2007 and even earlier, when the bank locker was opened, they did not find any Will and according to the plaintiff, the Will was found in a suitcase of the father. This version is corroborated by the written statement of the second defendant, who also affirms that the Will was found in a suit case and the second defendant also corroborated the evidence of the plaintiff that a copy of the Will was given to both the defendants. However, the first defendant denies having received a copy of the Will and in fact, in her evidence, she claims that a copy of the Will was never given to her. She contends that the plaintiff orally informed her about the existence of the Will to her in the year 2010. However, she has also stated that she was shown a copy of the Will and she has gone through the same. She has also stated that she never asked for a copy of the Will.

19. In fact, the first defendant took out an application in A.No.2762



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of 2022 seeking to send the Original Will dated 13.02.1997 for comparison to the Forensic Department to obtain an expert opinion. However, for reasons best known to her, the application was not pursued and was withdrawn.

20. Asfar as the delay is concerned, I do not find the same to be fatal to the case of the plaintiff. The evidence of P.W.1 as to the manner and time at which he came to know about the existence of the Will is also reasonably and fairly corroborated by the second defendant/brother of the plaintiff in his written statement. It is also settled law that Article 137 of The Limitation Act, 1963 would not apply to proceeding for grant of Probate and Letters of Administration of Wills, under Original Side Rules of this Court. Delay, if any, beyond three years has to only be explained. I am satisfied with the explanation offered by the plaintiff.

21. The argument of the learned counsel for the first defendant that



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an important document like a Will would only be kept in a locker and not at home, loosely with other papers in a suit case, cannot be countenanced and is liable to be rejected. It is for the testator to take a call on where to keep the original Will and who are the persons who are to be informed about the execution of the Will. The testator may even choose to keep the execution of the Will secret, to be known whenever the Will is stumbled upon by the family members. Therefore, merely because the testator has not informed the plaintiff or his wife or the other children about the execution of the Will and had kept in a suit case at home will not amount to a suspicious circumstance. The plaintiff therefore cannot be non-suited on the ground that the Will has surfaced after five years from the date of demise of the testator. Moreover, the first defendant has specifically taken a plea of forgery. Having found that the Will has already been duly executed and attested as required under the law, and there being no germane, suspicious circumstances surrounding the execution of the Will, the burden stands shifted to the first defendant to establish the plea of forgery.



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22. As already discussed herein above, despite taking out an application, seeking comparison of the signature of the testator, the same was not pursued by the first defendant for reasons best known to her. That apart, P.Ws.3, 4, 5 and 6 have been summoned along with records from the respective banks/institutions containing signatures of the testator to prove the truth and genuineness of the signature found in Ex.P.3 Will. This exercise on the part of the plaintiff only establishes the bonafides of the plaintiff to go all out to prove that the Will was only signed/executed by the testator and is not a forged document.

23. I do not find anything coming out of the cross examination of the said witnesses with regard to the documents containing the signature of the testator. In any event, once due execution and attestation of the Will is proved in accordance with Section 63 (c) of Indian Succession Act, 1925, the person, who alleges forgery, is bound to prove such plea. In view of proof of due execution and attestation of Ex.P.3 Will, I do not deem it necessary to go into the various documents produced by third parties and marked as



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Government exhibits.

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24. I find that there is nothing brought on record by the first defendant to establish the plea of forgery. Even though the first defendant has contended that the testator and the plaintiff were not in good terms and that the plaintiff was asked to move to the first floor and reside there on payment of monthly rent of Rs.5,000/-, the said contention has also not been established by the first defendant. In fact, the reply statement as well as in cross examination, the plaintiff has explained the reasons as to why he moved to the first floor, the same being to facilitate his younger brother to occupy the ground floor along with parents, especially after his marriage.

25. The non-disclosure of the Will by the testator even to his wife or children cannot be raised as suspicious circumstance to invalidate the execution of the Will. The suspicious circumstance should be those that surround the very execution and attestation of the Will and not an event that has occurred/transpired later in point of time.



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26. Equally, the fact that the first attesting witness did not disclose about the execution of the Will at the time of attending funeral ceremony will not amount to a suspicious circumstance. The first attesting witness would have thought it fit to not bring up the issue of Will at the time of funeral ceremony and therefore, merely because the attesting witness remained silent, it would not be a ground to invalidate the Will, which is otherwise proved to be executed and attested in accordance with law.

27. Moreover, I find from the Will that the daughter is also a beneficiary and it is not as if she has been totally neglected under Ex.P.3 Will. Moreover, it is only to defeat the ordinary line of succession that a Will is executed and therefore, merely because the daughter has been given a lesser share or even if she is totally neglected, the same would not normally amount to a suspicious circumstance.



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28. Learned counsel for the first defendant has placed reliance on the decision of the Hon'ble Supreme Court in ***Murthy and Others vs C.Saradambal and Others*** reported in (2022 (2) MWN (Civil) 449), where the Hon'ble Supreme Court has held that Will not seeing the light of the day for long would amount to a suspicious circumstance. However, the facts before the Hon'ble Supreme Court were entirely different and in fact, even in the said decision, the Hon'ble Supreme Court has held that reasonable explanation can be offered and taken into consideration with regard to such suspicious circumstance, including the fact that the Will did not see the light of the day for long.

29. In the present case, the plaintiff has satisfactorily explained as to how he came to know about the existence of the Will and therefore, the mere fact that the Will was found only in June 2007 and thereafter, steps were taken to obtain Letters of Administration would not amount to a suspicious circumstance in the facts and circumstances of the present case.



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30. Having proved due execution and attestation of the Will through evidence of P.W.2 and P.W.7 and the first defendant/caveator also failing to discharge the burden of proof on her to establish the plea of forgery, I find the plaintiff is entitled to a grant of Letters of Administration.

31. Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in respect of the Will dated 13.02.1997 in favour of the plaintiff. The plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The 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. The plaintiff is further directed to make a full and true inventory of the property and credits of the said deceased within six months from the grant of Letters of Administration to him and also render to this Court, a true account of the said property and credits within one year from the said date. Considering the relationship



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between the parties, there shall be no order as to costs.

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Index : Yes/No
Speaking/Non-speaking order
sr

Witnesses examined on the side of the plaintiff:

P.W.1. - S.Kumaresh
P.W.2 - S.Sukumar
P.W.3 - Ms.Gomathi
P.W.4 - R.Swaminathan
P.W.5 - A.Sivakumar
P.W.6 - S.Balaji
P.W.7 - S.Gopinath

Exhibits produced on the side of the plaintiff:

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8	P.8	...	Signature of P.W.2 at page 6 in Ex.P.3Will
9	P.9	...	Affidavit of attesting witness CA Srinivasan
10	P.10	..	Printout copy along with savings bank account details of Mr.Subramania Chetty
11	P.11	..	Inventory of Locker No.H-41 of Subramania Chetty and K.S.Dhanalakshm

Witnesses examined on the side of the defendants.

D.W.1 - Mrs.Uma Elangovan

Exhibits produced on the side of the defendants:

Nil

Documents marked as Court Exhibits:-



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S.No.	Exhibits	Date	Description
1.	X-1	...	Original Application form of K.Subramania Chetty in TDR no.C289673 dated 23.10.1996 with copy of deposit receipt in joint name of K.Subramania Chetty and Mrs.K.S.Dhanalakshmi
2.	X-2	...	The signatures of Subramania Chetty found in original application form (2 Nos.)
3.	X-3	...	TDR No.D.234640's Original application renewal form with FD receipt (3 papers)
4	X-4	...	The signature of K.Subramania Chetty is found in Ex.X.3 original application.
5	X-5	...	Signature of Subramania Chetty found in original FD enclosed with Ex.X3.
6	X-6	...	The signature of K.Subramania Chetty in renewed FD
7	X-7	...	Original application form for TDR No.E357816 in the joint names of K.Subramania Chetty and Mrs.K.S.Dhanalakshmi with original FD receipt.
8	X-8	...	Signature of K.Subramania Chetty found in original application.
9	X-9	...	The signature of K.Subramania Chetty found in Deposit Receipt.



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S.No.	Exhibits	Date	Description
10	X-10	...	The scanned signature of K.Subramania Chetty
11	X-11	...	Certified copy of application for opening an account under senior citizen saving scheme 2004 of K.Subramania Chetty with his 3 specimen signatures and one signature in the application and another signature is at end of the application in A/c No.3411005.
12	X-12	...	Certified copy of application for opening of an account under senior citizen savings scheme 2004 of K.Subramania Chetty with his 3 specimen signatures and one signature in the application and another signature is at end of the application in A/c No.3411132.
13	X-13	...	Certified copy of application for opening of an account under senior citizen savings scheme 2004 of K.Subramania Chetty with his 3 specimen signatures and one signature in the application and another signature is at end of the application in A/c No.3410287.
14	X-14	...	Printout of the monthly income scheme application along with scanned signature of K.Subramania Chetty in new A/c No.1040788101 with enlarged scanned signature.



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S.No.	Exhibits	Date	Description
15	X-15	...	Printout of the time deposit application along with scanned signature of K.Subramania Chetty in new A/c No.1040592463 with enlarged scanned signature.
16	X-16	...	Printout of the senior citizen savings scheme application along with scanned signature of K.Subramania Chetty in new A/c No.1040702480with enlarged scanned signature.
17	X-17	02.01.2023	Original authorisation letter dated 02.01.2023.



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P.B.BALAJI,J.,

SR

Pre-Delivery Judgment in
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