



Rev.Appl. Nos.54 & 55 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Rev.appl.Nos.54 & 55 of 2024
and
CMP.Nos.6948 of 2024 & 6963 of 2024

Benetiet John Bosco

.. Review Applicant in both

Vs.

1.Regina Rita

...1st respondent in both

2.Leena Premkumari @ Leela Natha

3.Pandian

4.A.Xavier

5.Peter

6.John

7.Arulraj

8.K.Sekar

9.Xavier

10.C.Subash

11.M.Mariyaraj

12.Kumari

13.A.William Arul Prakash (Died)

..Respondents 2 to13 in Rev.Appln No.54/2024

2.Leena Felix

... 2nd respondent in Rev.Appln No.55/2024



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COMMON PRAYER : Review Petitions are filed under Section 1144 read with Order XLVII Rule 1 of the Code of Civil Procedure, against the order dated 28.04.2023 passed by this Court in S.A.Nos.415 & 416 of 2016, respectively.

For Appellant in both : Mr.K.Sukumaran

COMMON ORDER

These Review applications have been filed to graciously review the order dated 28.04.2023 passed in S.A.Nos.415 and 416 of 2016 by this Court.

2.The petitioner prays to review the order dated 28.04.2023 passed by this Court in S.A.Nos.415 and 416 of 2016 on the following grounds:



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"1.The judgment passed by this Court is against law.

2.The respondent relied upon registered Will dated 24.08.2001 in respect of item No.2 of the suit property in O.S.No.796 of 2012 and the said Will, claimed to be in favour of the plaintiffs, has not been

proved as provided under law viz. Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

3.The respondent herein relied upon another Will dated 07.11.2001 in respect of item 1 of the suit property in O.S.No.796 of 2012 and the said Will, claimed to be in favour of the plaintiffs, has not been proved as provided under law viz. Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

4.The Evidence of PW2, who is said to be the attestor of the Wills under Ex.A23 and A24 dated 24.08.2001 and 07.11.2001, does not satisfy the requirements of compliance of "attestation", within the meaning of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

5.The Evidence of PW2 relied on by this Court, even in the



Chief Examination, has not categorically and particularly stated, the compliance of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

6.The evidence of PW2 in his chief examination has stated that the testator Rajamma has appended her signatures in their presence in the place where the subject Will was prepared and thereafter the said Will was registered in the concerned office of the Sub Registrar and whereas in the cross examination, PW2 has categorically stated that he testator Rajamma has not appended her signature in the office of the document writer and the Will was executed by appending the signature of the testator only in the office of the Sub Registrar, in so far as Ex.A23 is concerned.

7.In so far as Ex.A24 is concerned dated 07.11.2001, also the said Will was executed only in the office of the document writer and as respects this document - Ex.A24, the testator appended her signature earlier in the presence of PW2 and another and thereafter PW2 attested the said Will and thereafter other Attestor Panneerselvam appended his signature, and whereas in the cross examination, the PW2 has taken a "U" turn and stated that Ex.A24 was attested by PW2 and another witness Panneerselvam and only thereafter, the testator Rajamma appended her signature.



8.The observation in paragraph 11 of the judgment that the 1st defendant namely the Review Petitioner in his evidence admitted the execution of these Wills by testator Rajammal will not relieve the plaintiffs from proving the Will in the manner known to law, since they are beneficiaries of the said Will.

9.There is no evidence of attestation within a meaning of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. The observation of this Court in paragraph 12 of the judgment that the defendants bound to prove the Will - Exhibits B2 and B3 (the Review Applicant), is applicable to Exs.A23 and A24 also, a Will relied on by the respondents 1 and 2 in this review petition.

10.The PW2 is the witness namely the attestor to Exs.A23 and A24 and in paragraph 14 of the proof affidavit, he has stated that he has appended his signatures in the presence of the scribe of the Will, the other witness Resipaul and the 2nd defendant William and thereafter in paragraph 15, he has stated that the other witness Resipaul appended his signature in the presence of everybody, in so far as Ex.A23 is concerned and the above evidence in chief by PW2, will not amount to compliance of Section 63 of the Indian Succession Act, since there is no assertion by PW2 that he and the other witness



Resipaul signed the said Will in the presence of the Testator, which factor is an importance compliance of Section 63 of the Indian Succession Act.

11.In so far as Ex.A24 is concerned, the evidence of PW2 will not be sufficient since there is no evidence as to PW2 and other witness Panneerselvam signed the Ex.A24 in the presence of testator Rajammal.

12.It is in evidence of PW2 that Exhibits A23 and A24 were executed and attested in the office of the document writer and in the office of the Sub Registrar, the execution and attestation of Exhibit A23 and A24 did not take place. Whereas in the cross examination of PW2, that the Will was prepared in a stamp paper, that testator Rajammal has not appended her signature in the office of the document writer and PW2 asserted that Rajammal, the testator appended her signatures only in the office of the Sub Registrar. PW2 further stated in the cross examination that in the office of the document writer, he did not subscribe his signature and only thereafter he appended his signatures.

13.In so far as Ex.A24 is concerned, PW2 in his cross examination has stated categorically that he and other witness Panneerselvam appended their signatures in advance and only



thereafter the testator Rajammal signed the said Will and such evidence is totally inconsistent with the mandate of Section 63 of the Indian Succession Act and completely inconsistent with his evidence in the chief examination.

14.The plaint in O.S.No.796 of 2010 filed by the respondents 1 and 2 viz. the plaintiffs have not pleaded specifically that in so far as the execution of the said Wills dated 24.08.2001 and 07.11.2001, the said Wills were executed in the manner known to law viz. Section 63 of the Indian Succession Act and Section 3 of the Transfer of Property Act and in the absence of a plea, the evidence let in by the plaintiffs / respondents 1 and 2 in this review petition are liable to be rejected on the well laid down principles in the absence of plea, no evidence can be let in.

15.The finding in paragraph 11 of the judgment that the testator affixed her signature after the Will was read over therefore execution of the Will was proved beyond reasonable doubt, in the absence of compliance of mandatory attestation in so far as the said Will under Section 63 of the Indian Succession Act, is an error apparent on the fact of the record.

16.This Court while decreeing the suit filed by the respondents 1 and 2, has not given a categorical finding in response



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to the first substantial question of law in the matter of statutorily and mandatorily to be complied with in accordance with Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act for the sole reason there is no categorical finding by this Court that the subject Wills viz. Ex.A23 and Ex.A24 have been attested by PW2 and another witness, each of whom has seen the testator Rajammal, signed the Will and likewise, PW2 and other attestor have signed in the Will in the presence of the testator. In the absence of any materials produced by the respondents 1 and 2 / plaintiffs in the suit, Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act cannot be said to have been complied with and failure to give a finding as stated supra, is an error apparent on the fact of the record."

3.Perused the grounds raised by the petitioner. Thus, learned counsel for the petitioner wishes to revisit the entire order dated 28.04.2023 passed by this Court in S.A.Nos.415 & 416 of 2016, as it is beyond the scope of review. There is no error apparent on the face of records. The petitioner wants to revisit the second appeals under the guise of review which is beyond the scope of review. While passing orders in the above second appeals this court elaborated discussions about the nature of execution of Will based on



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law and oral and documentary evidence. If at all the petitioner is aggrieved about the findings, he is entitled to approach the higher forum in the manner known to law.

4. These Review applications stand dismissed accordingly.

Consequently, connected miscellaneous petitions are closed. No costs.

23.04.2024

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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