



WEB COPY



CMA No.379 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.379 of 2024

D.Ramesh

..Appellant/Petitioner

.Vs.

1.S.V.Soundaram

2.K.S.Vijaya

3.S.Bhoomavalli

4.Lakshmi Srinivasan

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 299 of Indian Succession Act, to set aside the order dated 22.9.2023 and consequently the probate OP may be allowed and the appellant may be granted probate of the Will dated 28.8.2020, executed by K.S.Soundararajan.

For Appellant : Mr.Karthik

For Respondents : Mrs.Santhiya Lakshmanan

ORDER

This appeal has been filed under Section 299 of the Indian Succession Act, 1925, challenging the order passed in the probate Original Petition No.88 of 2022, by the Principle District Judge, Kanchipuram, dismissing the application filed by the



CMA No.379 of 2024

appellant, who is the executor of the Will under Sections 222, 255 and 276 of the Indian Succession Act, 1925, to grant probate for the Will executed by the deceased K.S.Soundararajan on 28.8.2020.

2.The deceased K.S.Soundararajan executed a Will dated 28.8.2020 and bequeathed his property in favour of his sister and all his nephews, nieces in equal shares. The said K.S.Soundararajan died on 9.9.2020. His wife pre deceased him on 3.5.2020. That apart, the brother of the deceased also pre deceased him on 26.9.2000. There are no other legal heirs for the deceased except respondents 1 to 4.

3.After demise of the said K.S.Soundararajan, the petitioner who was appointed as an executor of the Will and who also happens to be the nephew of the testator, filed an application before the Court below for probate of the Will dated 28.8.2020. The respondents 1 to 4 filed the consent affidavit by accepting the genuineness of the Will. That apart, one of the attesting witness was examined as PW.2 and he had spoken about the execution of the Will by the testator and in whose presence, the testator had signed the Will.

4.The Court below has dismissed the application mainly on the ground that there is no clarity with regard to the relationship of the respondents with the deceased. That apart, the Court below also found that if really the deceased wanted



CMA No.379 of 2024

to bequeath the property, the same would have been done by way of registered instrument in order to avoid any unnecessary legal complications. The Court below also found that the Will was executed only a few days before the demise of the testator. Hence, the Court below found that the Will is shrouded under suspicious circumstances. Consequently, the Court below refused to grant probate for the Will and dismissed the application. Aggrieved by the same, the present appeal has been filed before this Court.

5. Heard the learned counsel for the appellant and carefully perused the materials available on record. The learned counsel for the respondents submitted that the 2nd respondent is one of the beneficiary under the Will and all the respondents have already filed consent affidavit before the Court below.

6. In the considered view of this Court, a Will has to be proved in line with Section 68 of the Indian Evidence Act, 1872. For that purpose, it is mandatory that an attesting witness has to be examined. In the instant case, PW.2 was the attesting witness. He has stated in his evidence that he was present together with the other attesting witness and saw the deceased executing and signing the Will dated 28.8.2020. Thereafter, at the request of the deceased and in his presence and in the presence of the other attesting witnesses, he had signed as one of the witness in the Will.



CMA No.379 of 2024

7.In the light of the above evidence of PW.2, it is seen that the execution of the Will has been sufficiently proved and it is further strengthened by the evidence of the appellant who was examined as PW.1 and who happens to be the executor of the Will.

8.There is no requirement to register a Will. It is an option that is available to the testator and just because the Will has not been registered, that by itself will not turnout to be a suspicious circumstance. That apart, no one else has raised any ground of suspicious circumstances surrounding the execution of the Will. The Court below has assumed that since the Will has been executed a few days before the demise of the testator, there is some suspicion in the execution of the Will. Suspicion in the execution of a Will is not a matter of assumption and it requires attendant circumstances to establish the same. In the absence of anyone else raising the plea of suspicious circumstances, the Court below ought not to have ventured into a discussion on that issue.

9.In the light of the above discussion, this Court finds that the order passed by the Court below in probate Original Petition No.88 of 2022, dated 22.9.2023 is liable to be interfered by this Court and accordingly, the same is set aside. The probate shall be granted in respect of the last Will and testament dated 28.8.2020 executed by K.S.Soundararajan.



CMA No.379 of 2024

WEB COPY

10. In the result, this Civil Miscellaneous Petition stands allowed. No costs.

01.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Principle District Judge
Kanchipuram,

Copy to:-

The Section Officer
VR Section, High Court,
Chennai.



WEB COPY



CMA No.379 of 2024

N. ANAND VENKATESH., J
KP

CMA No.379 of 2024

01.04.2024