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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2024

Pronounced on : 04.12.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.34 of 2015 in
(OP.No.22 of 2015)

R. Nagarajan

... Petitioner/Plaintiff

vs.

1. Sitalakshmi Ramanathan (deceased)

(1st defendant died, the 2nd defendant Indira Jayaraman
recognized as legal heir of the deceased 1st defendant
amendment carried out as per order
dated 23.06.2022 in A.No.1838/2022)

2. Indira Jayaraman

....

Caveators/Defendants

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration. As per order of this court dated 07.09.2015 in O.P.No.22 of 2015, the Original Petition has been converted into Testamentary Original Suit No.34 of 2015.



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For Plaintiff : Mr.Ramakrishnan
Senior Counsel
For M/s.Waram & Sairam

For Defendants : Mr.A.Muthukumar
for M/s.P.Srividhya for D1 & D2

J U D G M E N T

The suit is filed for issuance of letters of Administration with the will annexed to be granted to him as the son/beneficiary of the deceased having effect throughout the State of Tamilnadu.

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

a) The plaintiff's father K. Ramanathan has not appointed any Executors in the said Will to execute the Will dated 04.02.1985 and the plaintiff himself and his late brother C.R. Chandrasekar are the only two beneficiaries. It is stated that the Will of Mr.K.Ramanathan has bequeathed to his wife Mrs.Sitalakshmi the right of enjoyment of the whole property. After the life time of his wife Mrs.Sitalakshmi, the ground floor of the house with the surrounding vacant land with trees thereon should go to his second son C.R.Chandrasekar and in the first floor should go to his first son



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R.Nagarajan. The petitioner's brother C.R.Chandrasekar died on 18.05.1985, and succeeded by his legal heirs as per the legal heirship Certificate dated 15.04.1986 who are all shown as the respondents 4 to 6. His brother and his family are entitled to get the ground floor with surrounding vacant land with trees, etc, after the life time of his mother.

b) It is further stated that the amount of assets which are likely to come into petitioner's hands does not exceed in the aggregate sum of Rs.25,00,000/- and the net amount of the said assets after deducting all items which the petitioner is by law allowed to deduct is only of the value of Rs.24,85,000/-. It is further stated that the respondents 2, 4 to 6 have filed their consent affidavits stating that they have no objection for issue of letters of administration in favour of the petitioner in respect of the Estate of late K.Ramanathan.

c) It is further stated that there is no understanding between the petitioner and his mother and the third respondent, who is his elder sister. The petitioner has filed this petition to get the final decision regarding enforcement of this Will in view of this there is a delay of nearly 18 years in filing this petition and the delay caused in filing the petition is neither wilful



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nor wanton but due to the abovesaid reasons. Hence, he seeks to allow this suit for the above stated reliefs.

3. In the written statement, the 1st defendant has stated as follows:

a) The property mentioned in the annexed Will said to be executed by her husband in favour of the petitioner was purchased by her husband from the Housing Board by making monthly payments. It is submitted that the 3rd defendant's husband passed away in the year 1988 at the age of 47 years and they had two children. No prudent father would have allowed his Will to prevail after the death of his son and son-in-law without executing another Will or modifying the terms of the Will and the same shows that the Will in question is surrounded by suspicious circumstances. The testator died in the year 1996 and at no point of time, the petitioner was taking care of his parents and even after the death of the Testator, the 3rd defendant only was taking care of 1st defendant and the property by spending huge amounts for renovation and for its maintenance as the building is an old one. The audibility and eye sight of her husband was poor. He could not have written the alleged Will out of his free Will. Though the Testator died on



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05.11.1996, the petitioner has not taken any steps to get letters of administration for nearly 19 years. Further the petitioner wants to grab the property in exclusion of the 3rd defendant herein who is taking care of her. After the death of the Testator, the 3rd defendant left her job at Bangalore and settled down in Chennai to take care of her. The very fact that the existence of Will was never informed to any one by the petitioner nor there was reference about the same in the subsequent documents viz., the settlement deed. Hence, it is a forged document.

b) It is found that there is a settlement deed dated 19.08.2010 registered at the office of the Sub-Registrar Anna Nagar said to have been executed by the 1st defendant in favour of the petitioner herein. If the Will in question was genuine one there was no necessity for the petitioner to get a settlement deed from her under the pretext that he required a power deed. The relationship between the petitioner and his father was not cordial. The petitioner was living in Pune till 2009. Hence her husband would not have totally disinherited the 3rd defendant particularly she became widow in the year 1988. Hence the petitioner has to prove not only the validity of the Will, he has also to prove that the Will was executed by his father under



normal circumstances and to dispel the suspicious circumstances. Hence, they pray for dismissal of the suit with exemplary cost.

4. On the pleadings of the parties and hearing the learned counsel appearing for both sides, the following issues were framed for determination:-

(1) *“Whether the Will dated 04.02.1985 is True and genuine*

(2) *“To what other reliefs, the plaintiff is entitled?”*

5. On the side of the Plaintiff, Ex.P1 to Ex.P14 were marked and PW.1 to P.W.6 were examined. On the side of the Defendants, no Documents were marked nor any evidence was examined.

6. This Court heard the submissions of the learned counsel on either side.



WEB COPY Issue Nos.1 and 2:

7. The learned counsel for the plaintiff submits that the suit property is self acquired by the Testator ie. Mr. K. Ramanathan out of his own earned funds from the Tamilnadu housing Board. He executed the Will dated 04.02.1985 in favour of his two sons namely the Plaintiff Mr.R.Nagarajan and his second son Mr. C.R.Chandrasekar in the presence of two attesting witnesses and the same is registered as Document No.5 of 1985 before the Sub Registrar of Anna Nagar. The Testator Mr. K.Ramanathan died on 05.11.1996 at Chennai.

8.It has been further submitted that the 2nd attesting witness of the Will Mr. K.S.Padmanabhan, who was a neighbor of the Plaintiff, informed the plaintiff that Mr. K.Ramanathan (deceased) had executed a last Will and Testament in which the said Mr. K.S.Padmanabhan had signed as an attesting witness. Only thereafter the Plaintiff made enquiries with his mother Mrs. Sitalakshmi Ramanathan and she then handed over the original Will to the Plaintiff. Subsequently, the plaintiff filed the O.P.No.22 of 2015



for grant of Letters of Administration in the year 2015 and thus, there was a delay of almost 18 years from the date of demise of the Testator in filing the petition. The delay is not willful nor wanton but due to the fact that the Plaintiff was not aware of the existence of the Will till around 2013.

9) The learned counsel for the Plaintiff further submits that both the attesting witnesses had executed Affidavits of Attesting Witness which were filed along with the O.P. Since 2nd attesting witness died, his son namely Mr. Rangaraj was examined as PW-5 to prove the signature of the 2nd attesting witness in the Will. Further, one Mr. Venkatraman, the cousin of the Testator as PW-6 to prove the signature of the Testator in the Will. The 2nd Defendant had filed a Memo adopting the Written Statement filed by the 1st defendant.

10. It has been further submitted that 1st defendant had executed the Settlement Deed dated 19.08.2010 in favour of the Plaintiff purportedly settling her 1/5th undivided share wherein the 2nd Defendant and her daughter Mrs. Upasini Jayaraman, had signed as witnesses to the same by



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creating an impression that the Testator had died intestate and hence all the legal heirs were entitled to a 1/5th undivided share in the said property.

Since the Plaintiff was not aware of the execution of the said Settlement Deed, till the year 2016, the same was not mentioned in the O.P. and therefore, there is no suppression what so ever. The same is only a diversion and a red herring document created by the Defendants to challenge the Will, and the same has to be ignored. Hence, he prays to grant Letter of Administration with the Will annexed to the Plaintiff.

11. The learned counsel for the 2nd defendant submits that the father of the Plaintiff Ramanathan died on 05/11/1996 and the Testator's 2nd son ie. C.R Chandrasekhar predeceased him. The Plaintiff filed OP No.22 of 2015 on 25/09/2014, that is nearly 18 years after the death of the testator. Further, in view of the objection by the defendants 1 and 2, the said OP was converted into TOS.

12. It has been further submitted that the testator was aged more than 75 years at the time of execution of the alleged Will. His eyesight



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and audibility were poor. His mental condition was also not good. Hence the Will in question is not a genuine one but surrounded by several suspicious circumstances. Though the testator died as early as on 05/11/1996, the plaintiff had not taken any step to get the letter of administration till 2014. This itself is a suspicious one. The contention of the 1st defendant is that if the Will in question is true and genuine, there would be no necessity for the plaintiff to get a settlement deed dated 19.08.2010 from the 1st defendant.

13. The learned counsel for the 2nd defendant further submitted that there is no valid reason for not filing the OP nearly after 18 years. The plaintiff has suppressed the Settlement Deed which runs contrary to the Will. The plaintiff has not proved the signature of the Testator in the Will and there are differences in the signatures of the testator. The plaintiff has not approached the court with clean hands as he lured PW4 with an offer of Rs. 50 Lakhs. To prove the Will, the plaintiff has not examined any attesting witnesses who had signed in the Will. As the Will is surrounded by several the aforesaid suspicious circumstances, the TOS is liable to be dismissed. In support of his arguments, he relied on the Judgments reported in (i) 1 1994



1 SCC Page No.1 (ii) 2024 2 CTC Page No. 218 and (iii) AIR 1959 SC 443.

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14. On a perusal of the records, it is seen that the Testator, ie. Mr. K. Ramanathan has executed the Will dated 04.02.1985 vide Ex.P1, and died on 05.11.1996 vide Ex.P5. The plaintiff and the defendants herein are the legal heirs of the Testator. Vide Ex.P6 There is no dispute that the Testator purchased the suit schedule property from the Tamil Nadu Housing Board, by virtue of Sale Deed dated 08.12.1978 vide Ex.P2 out of his own income.

15. On perusal of the said Will-Ex.P1, it is seen that the Testator has executed the said Will in his wife favour stating that she has the right of the enjoyment of the property till her life time. After her life time, the ground floor of the House with the surrounding vacant space with trees on, should go to his 2nd son and the 1st floor should go to his 1st son. The plaintiff was not aware of the said Will as the plaintiff was working at TELCO, in Pune till June 2007 and residing till his wife retirement in the year 2011 and the relationship between the plaintiff and his mother/1st defendant was not conducive. Further, 2nd son ie. Late C.R. Chandrasekar



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predeceased to the Testator on 18.05.1985. Vide Ex.P9. The legalheirs of Late.C.R.Chandrasekar were also parties in the present suit as the Defendants 4 to 6. Vide Ex.P3.

16.The plaintiff came to know about execution of the Will through the 2nd attesting Witness of the Will in the year 2013. On enquiry about the Will with his mother, she handed over the original Will-Ex.P1 to the plaintiff. Based on the original Will, the Plaintiff filed O.P. No.22 of 2015 in the year 2015 having impleaded the legalheirs of the Testators as parties in the proceedings. In the Written Statement of the 1st Defendant -mother, she has stated that she has not whispered anything about the Will and revealed about the execution of the Settlement Deed in favour of the plaintiff by settling her 1/5th share in the suit schedule property under Document No.2864 of 2010 dated 19.08.2010.vide Ex.P7. With regard to execution of the settlement deed in favour of the plaintiff, is not known to him until revealing the same in her Written statement. It could be seen from Ex.P7, -Original Settlement Deed, the Daughter of the 2nd defendant as 1st witness and the 2nd defendant as 2nd witness signed in the said Settlement



Deed. On perusing the Ex.P.1, the 1st defendant has the right only for the enjoyment of the property till her life time. After her life time, the benefit of the Will shall go to her two sons. As per the Will, the 1st defendant has no right to execute the Settlement Deed on her 1/5th share in favour of the plaintiff.

17.It is seen from the records that both the Attesting Witnesses ie. (i) D.Swaminathan and (ii) K.S. Padmanabhan of the said Will were alive during filing of the aforesaid O.P and filed their affidavits stating that they were present and both saw the testator, putting his signature in the Will and the testator saw them putting their signatures as witnesses and thereby it is also spoken about the attestation of the document, in accordance with law. During the O.P. Proceedings, both attesting witnesses are reported died.

18. In such circumstances, to prove the Will, P.W.5, Mr.K.Rangaraj who is son of the 2nd Attesting Witness ie. K.S. Padmanabhan was examined to confirm the signature of his father in the said Will. The same has been identified and confirmed by him in his



evidence. Further, to prove the signature of the Testator, one of the cousin of the Testator who was examined as P.W.6, has deposed that the signature in the Will is the sign of the Testator.

19. The daughter of the Testator ie. Prema Sitaraman was examined as P.W.4 and filed her consent affidavit and the legal heirs of 2nd son being son Mr.Karthik Chandrasekhar was examined as P.W.2 and filed his consent affidavit, vide Ex.P13, wife ie. Usha Chandrasekhar was examined P.W.3 and filed her consent affidavit, daughter of the 2nd son ie. Mrs.Niranjana Chandrasekhar, has filed her consent affidavit through her mother by General Power of Attorney dated 16.07.2022 vide Ex.P14 in favour of the plaintiff. They do not have any objection in granting Letter of Administration in favour of the plaintiff. Further, the defendants 1 and 2 have not entered in the Witness box and produced any oral and documentary evidence to deny the claim of the plaintiff and to disprove the Will dated 04.02.1995.

20. Having considered the above observations, it is seen that the



plaintiff has proved the Will dated 04.02.1995 by examining the P.W5 and P.W.6 and marking the appropriate documents thereby it is proved that the Will dated 04.02.1985 is true and genuine. Accordingly, the plaintiff is entitled to grant Letter of Administration as prayed for. Hence, the Settlement Deed dated 19.08.2010 executed by the 1st defendant in favour of the plaintiff is null and void and TOS is liable to be allowed. Accordingly, Issue Nos.1 and 2 are answered.

21. In the result, the TOS is decreed as prayed for.

04.12.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking

Lbm



List of Witnesses Examined on the side of the Plaintiff:-

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1. P.W.1 – Mr.R. Nagarajan
2. P.W.2 – Mr. Karthik Chandrasekhar
3. P.W.3 Mrs. Usha Chandrasekhar
4. P.W4 Mrs.Prema Sitaraman
5. P.W5 Mr. K. Rangaraj
6. P.W6 Mr. R. Venkatraman

List of Witnesses Examined on the side of the Defendants:-

--Nil--

List of Exhibits Marked on the side of the Plaintiff:-

<i>Sl.No.</i>	<i>Dated</i>	<i>Description of documents</i>	<i>Exhibits</i>
1.	04.02.1985	Last Will executed of Late K. Ramanathan and in favour of plaintiff (Document No.6 of 1985)	Ex.P1
2.	08.12.1978	Sale Deed under which Late K. Ramanathan purchased the property at No.5, 8 th Cross , West Shenoy Nagar, Chennai.	Ex.P2
3.	01.04.1986	Legal Heirship Certificate of Late C.R. Chandrasekar, 2 nd son of the Testator	Ex.P3
4.	09.07.1996	Letter written by Testator K. Ramanathan to the plaintiff	Ex.P4
5.	08.11.1996	Death Certificate of K. Ramanathan (Testator)	Ex.P5
6.	19.11.1996	Legal Heirship Certificate K.Ramanathan (Testator)	Ex.P6
7.	19.08.2010	Deed of Settlement executed by 1 st defendant in favour of the plaintiff	Ex.P7



<i>Sl.No.</i>	<i>Dated</i>	<i>Description of documents</i>	<i>Exhibits</i>
8.	25.09.2014	Affidavit of Assets of the Testator executed by the plaintiff	Ex.P8
9.	02.07.1985	Death Certificate of C.R. Chandrasekar, the second son of the Testator	Ex.P9
10.	21.10.2016	Legal Notice issued by 2 nd defendant to the plaintiff	Ex.P10
11.	28.10.2016	Reply Notice issued by the plaintiff	Ex.P11
12.	04.11.2016	Death Certificate of Mrs.Seethalakshmi Ramanathan (1 st defendant)	Ex.P12
13		Consent Affidavit filed by 5 th respondent, Mr.Karthik Chandrasekar	Ex.P13
14	16.07.2022	General Power of Attorney executed by the 6 th respondent, Mrs.Niranjana Chandrasekar in favour of the 4 th respondent, Mrs. Usha Chandrasekar	Ex.P14

List of Exhibits Marked on the side of the Defendants:-

--Nil--

04.12.2024

Gv/Lbm



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A.A.NAKKIRAN,J.
Gv/lbm

Pre-Delivery Judgement in
TOS.No.34 of 2015

04.12.2024