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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM:

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

TOS.No.19 of 2021
in
(OP.No.970 of 2019)

M. Sunder

... Plaintiff

..Vs...

1.M. Panneer Selvam
2. V. Pushpalatha
3. G. Kalai Selvi

... 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 23.11.2020 in O.P.No.970 of 2019, the Original Petition has been converted into Testamentary Original Suit No.19 of 2021.

For Plaintiff : M/s.A.Kulandai Velu
For Defendants : Mr.Arasaprabu



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J U D G M E N T

The Testamentary Original Suit is filed for issuance of letters of Administration with the will annexed to be granted to him as the grandson/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 grandfather M.Masilamani has not appointed any Executor in the said Will to execute the Will dated 21.07.1995 and the plaintiff himself is the only beneficiary. The Will of M.Masilamani has bequeathed to his wife Mrs.Rajeswari the right of enjoyment of the property till her life time. After the life time of his wife, the properties will devolve only to the legitimate issues of his two sons. It can be enjoyed by those issues only when those issues had completed 21 years of age and until then it has to be maintained by the testator's two sons. His wife died on 28.01.2017 and Manoharan died on 08.09.2013 and the surviving legal heirs of Manoharan were his wife and the petitioner and all the legal heirs



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are made party in the petition. The second respondent has no issues and the petitioner became the only son of the elder son.

b) The amount of assets which are likely to come into petitioner's hands does not exceed in the aggregate sum of Rs.61,47,920/-. The subject registered Will was actually misplaced by the petitioner and the same could not be found. He further stated that he filed a complaint on loss of Will deed on 04.07.2018 with complaint ID: CAM1852996 and as the Will deed could not be traced, Non-traceable Certificate was obtained with C.No.133 dated 30.07.2018. Therefore, the certified copy No.CCA/Mylapore/1765/2018 has to be considered in place of the Original. Thus, he prays to allow this suit for the above stated reliefs.

3. In the written statement, the defendants had stated as follows:

a) The alleged Will dated 21.07.1995 is a concocted document. It is unconscionable for the Will to have been executed 20 years before his demise. The Will states that the Testator fathered two sons and three daughters when in reality, the Testator had only two daughters. Further,



Mr.Kalr Marc, one of the attesting witnesses to the Will attested that the Testator was of sound mind at the time of executing the Will.

b) It must be understood that mere registration of a Will is not sufficient proof of its genuineness especially when there are plethora of suspicious circumstances surrounding its alleged execution. The plaintiff does not state as to how he obtained knowledge of the Will or how he took possession of the original or a copy thereof, when the alleged Will escaped the eyes of the all the other family members for more than 21 years. Moreover, the plaintiff has not spelt out the manner in which the original was lost. The only intention of the plaintiff and his mother is to deprive defendants of their legitimate right to the property. 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 issue was framed for determination:-

1. "Whether the Will dated 21.07.1995 said to have been executed by Late Masilamani is genuine?"



5. On the side of the Plaintiff, Ex.P1 to Ex.P11 were marked and PW.1 to P.W.3 were examined. On the side of the Defendants, no Documents were marked nor any evidence was examined.

6. Heard both sides and perused the materials available on record.

Issue No.1:

7. The learned counsel for the plaintiff submits that the Defendants were the surviving legal heirs of the deceased M.Masilamani. The deceased Late.M. Masilamani had executed his Will and testament on 21.07.1995 in the presence of witnesses Mr.P. Karl Marc and Mr.V. Balan. The said Will has been registered as Document No.92 of 1995 before Sub-Registrar, Mylapore, Chennai. Further, under the Will only life interest was bequeathed to Mrs. Rajeswari W/o. Masilamani, and after her death, the said property would devolve to the legitimate issues of his sons Mrs. Manoharan and Mr. Panneerselvam. Furthermore, it is stated in the Will that the said property can be enjoyed by those issues only when the issues had completed 21 years of age and until then it has to be maintained by the testator's two sons.



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8.It has been further submitted that after the demise of the testator, his wife Mrs. Rajeswari enjoyed the property till her demise. Therein, the Will to be devolved upon the legitimate issues of testator's sons by completing 21 years of age. The 1st Defendant has no issues and the Plaintiff is the only son of Mr.Manoharan, thus becoming the sole beneficiary of the Will dated 21.07.1995. The original Will has been misplaced by the Plaintiff and filed a complaint on loss of Will and a non-traceable certificate has been issued by the concerned police authority. The Plaintiff had obtained a certified copy of the Will from Sub-Registrar Office, Mylapore on 31.08.2018.

9. The learned counsel for the plaintiff submits that The Registered Will dated 21.07.1995 has been signed by the testator Mr.Masilamani and the Will has been attested by two attesting witnesses - Karl Marc and Balan in accordance with Section 63 of the Indian Succession Act, 1925. The signature of the testator on the Will has been proved by one of the attesting witness PW2- Karl Marc in his Proof Affidavit.



10. It has been further submitted that the Argument of the Defendant seemed to suggest that the Testator do not know to sign and was capable of only affixing thumb impression. However there was no such specific pleading in the Written Statement of the Defendants. Secondly, even if it was pleaded, the Defendant ought to have let in independent evidence to prove the same. In the absence of such pleading and evidence, the argument of the Defendant cannot be countenanced as it goes beyond the pleadings.

11. The learned counsel for the plaintiff further submits that in the Cross examination of PW2, it is stated that the Execution of Will happened 30 years ago, thus it would be unreasonable to expect the witness to remember the exact time, which portion of the house did he execute the Will. If the Defendant had reasonable suspicion over the loss of Will, then they would have examined the Supine witness to prove the contention. But no steps were taken by the Defendant to substantiate the allegation. That being the case, the fact that the original Will has been lost would amounts to suspicious circumstance cannot be countenanced and the suit is



maintainable and can be decreed based on the certified copy of the Will. In support of his arguments, he relied on the Judgments (i) Vijender Singh v. State and Others - 2024 SCC OnLine Del 729 (ii) C.G. Raveendran Vs. C.G. Gopi 2015 SCC OnLine Ker 19439 (iii) Sahil Marwah and Another v. Vikas Malhotra and Others 2024 SCC OnLine Del 3348, (iv) Shakuntala Devi v. Savitri Devi and Others 1996 SCC OnLine HP 12 (v) Bharat Bhushan Sisodia v. State & Ors 2008 SCC OnLine Del 1272 and (vi) Meena Pradhan and Others v. Kamla Pradhan and Another (2023) 9 Supreme Court Cases 734. Thus, he prays the relief as prayed for.

12.The learned counsel for the defendants submits that the plaintiff admits during the cross-examination, that the testator was affectionate towards all his children and his intention was to ensure he kept all his children happy. Further, he specifically admits that the testator had only 2 sons and 2 daughters, and the suit property was apportioned into 7 portions and his sons were to take 2 shares each and his daughters were to take a share each. When questioned about the educational background of the testator, the plaintiff categorically admits that the testator was illiterate.



13.It has been further submitted that it is the settled position of

law that the Will should be ordinarily free from suspicious circumstances.

Where suspicious circumstances are brought on record, the Court can take presumptive evidence. In the present case, admittedly, the testator is an illiterate and only affixes his thumb impression. However, the alleged Will contains his signature. The plaintiff has produced no documents whatsoever to prove that it is the signature of the testator himself. Further, the stamp paper on which the certified copy of Will i.e. Ex.P9 was purchased in the name of the mother of the plaintiff. The contents of the Will states that the testator had 2 sons and 3 daughters, which is wrong. The Will does not disclose who the scribe is. It is trite law that execution of a Will must be held to have been proved to be ordinarily free from suspicious circumstances. In support of his arguments, he relied upon the Judgments, (i) S.R. Srinivasa v. S. Padmavathamma, (2010) 5 SCC 274), (ii) K.Laxmanan v. Thekkayil Padmini, (2009) 1 SCC 354, (iii) Shivakumar v. Sharanabasappa, (2021) 11 SCC 277, and (iv) H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426. Hence, as the Will is concocted one, the present suit is liable to be dismissed.



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14. On perusal of the records, it is seen that the suit property was purchased by Late Masilamani by virtue of Sale Deed dated 23.10.1982 in Document No.1418 of 1982 vide Ex.P1. Further, the said Masilamani is alleged to have executed the Will dated 21.07.1995 registered as Document No.92 of 1995 in the SRO, Mylapore, vide Ex.P9 in favour of his Wife ie Rajeswari only for enjoyment of the suit property till her life time. After her life time, the enjoyment of the suit property shall go to their two sons ie. Plaintiff's father and the 1st defendant. Thereafter, the children of two sons will become the absolute owner of the suit property after attaining the age of 21 years.

15. It is seen that the Testator died on 10.04.2016 vide Ex.P2 and the Wife of the Testator died on 27.02.2017 vide Ex.P3. However, the alleged Will is said to have been executed in the year 1995 by the said Testator. The 1st son of the Testator predeceased him on 08.09.2013. Vide Ex.P4. The plaintiff herein and the mother of the plaintiff are only legal heirs of the 1st son of the Testator vide Ex.P5. The plaintiff, the Mother of the plaintiff and the defendants are only legal heirs of the Testator vide



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Ex.P6. The plaintiff has stated that the Original Will had been lost. In this regard, he made a online complaint before the concerned Police Authority on 04.07.2018 vide Ex.P7 and the Police Authority could not trace the Will Document and gave Non-Traceable Certificate to the plaintiff on 24.07.2018 vide Ex.P8. Further, the plaintiff obtained a certified copy of the said Will from the concerned SRO. Vide Ex.P9.

16. In the cross examination of P.W.2 who is one of the attesting witnesses in the Will, he adduced that the Testator is an illiterate. To corroborate the same, it is seen that the Testator had put thumb impression during the purchase of the suit schedule property vide. Ex.P1-the Sale Deed dated 23.10.1982 in Document No.1418 of 1982. However, while perusing the certified copy of the Will vide Ex.P9, the Testator had signed in the Will.

17. Further, even though it is averred that the Original Will dated 21.07.1995 had been lost and made a complaint over it, in the pleading also, there is no whisper about when and where, it has been misplaced. Further, the plaintiff has not whispered anything about whether paper publication has been effected in this regard or not.



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18. On perusal of the said Will, it is stated that the Testator had two sons and three daughters. However, as per legal heir certificate vide Ex.P5 and Ex.P6, the Testator had only two sons and two daughters which is also accepted by both parties whereas even after 20 years of execution of the Will, the said mistake has not been corrected by the Testator. Further, the plaintiff and P.W2 have not whispered as to whether the contents of the Will have been read out and explained to the Testator or not as he was an illiterate.

19. It is seen from the said Will that even though the attesting witnesses have signed in the Will, there is no addresses of the attesting Witnesses therein to identify the attesting witnesses. Thus, the plaintiff is bound to clear the aforesaid suspicious circumstance in the execution of the Will. However, the plaintiff failed to prove the same by way of oral and documentary evidence. Accordingly, Issue No.1 is answered against the plaintiff.



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20. In the result, the TOS is dismissed. No costs.

19.12.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Lbm

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

P.W.1- Mr.M. Sunder

P.W.2- Mr.Karl Marc

P.W.3- Mrs.Kotteswari

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.	23.10.1982	Sale deed executed in favour of Mr.M.Masilamani	Ex.P1
2.	10.04.2016	Death certificate of M.Masilamani issued by the Department of Health, Corporation of Chennai with Regn. No.2017/13.173.000059/0	Ex.P2
3.	27.02.2017	Death certificate of Rajeswari issued by the Department of health, Corporation of Chennai with Regn.No. 2017/13/173/000019/0	Ex.P3
4.	05.02.2018	Death Certificate of Manoharan issued by	Ex.P4

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<i>Sl.No.</i>	<i>Dated</i>	<i>Description of documents</i>	<i>Exhibits</i>
		the Department of Health, Corporation of Chennai with Regn.No. 2013/19/123/000400/0	
5.	05.03.2014	Legal Heirship Certificate of M.Manoharan bearing SL.No.276/2014 issued by the Office of Tahsildar, Mylapore Taluk, Chennai-600 028.	Ex.P5
6.	04.08.2017	Legal Heirship Certificate of M.Masilamani bearing SL.No.1339/2017 issued by the Office of Tahsildar, Mylapore Taluk, Chennai-600 028.	Ex.P6
7.	04.07.2018	Complaint on cost of Will deed with complaint ID.CAM 1852996	Ex.P7
8.	30.07.2018	Non-traceable Certificate from Inspector of Police, B4, High Court Police Station, Chennai 104 with C.No.133	Ex.P8
9.	31.08.2018	Certified copy of the Will from Sub-Registrar Office at Mylapore on with certified copy Application NO.CCA/Mylapore / 1765/2018	Ex.P9

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

--Nil--

19.12.2024

Gv/Lbm

A.A.NAKKIRAN,J.



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