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TOS.No.28 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2023

PRONOUNCED ON : 07.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.28 of 2016

1. Sri. C.K. Vijayaraghavan,
2. Smt. Lakshmi Govindarajulu,
- 3.Smt. Janaki Durairaj,
- 4.Smt. Yasodha Aranganathan,
- 5.Sri. C.K. Sekar,
6. Sri. C.K. Vasudevan

...Plaintiffs

...Vs...

Sri C.K. Raghupathy

....Defendant

Prayer:- This Testamentary Original Suit has been filed, under Sections 232, 242 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 5 of the Original Side Rules, for the grant of Letter of Administration in respect of the Will dated 30.04.2001.

For Plaintiffs : Mr. D.R. Raghunath

For Defendant : Mrs.Kanimozhimathi



TOS.No.28 of 2016

WEB COPY

JUDGMENT

This suit has been filed by the plaintiffs originally as O.P.No.51 of 2015 and since the the defendant filed caveat, it has been converted into T.O.S. The said O.P.No.51 of 2015 was filed by the plaintiffs/petitioners, for the grant of Letter of Administration in respect of the Will dated 30.04.2001, executed by the deceased C.K. Kesavalu, who died on 04.07.2008.

2. The case of the Plaintiffs, as set out, in the plaint is as follows:-

(a) The deceased Sri. CK. Kesavalu, at the time of his death left an immovable property in Chennai, namely, a property bearing Door No.33 (Old No.15), Eswaradas Street, Triplicane, Chennai - 600 005, which is hereinafter referred to as the Said Property. The said Will was duly executed by him at Chennai on the 30th day of April, 2001 in the presence of two witnesses, namely, late Sri. C.K. Mohan, and Sri. V.K. Jayachandran. The said Will was registered as Document No.22 of 2001, on the file of the Sub-Registrar, Triplicane.



TOS.No.28 of 2016

WEB COPY

(b)By the said Will the deceased Sri. C.K.Kesavalu has not appointed any persons as executor of the said Will. The Affidavit affirmed by Sri. V.K. Jayachandran, one of the attesting witnesses, to prove the due execution of the said Will by the said late. Sri. C.K. Kesavalu is filed herewith. Another attesting witness, namely, Sri. C.K. Mohan, the brother of the late. Sri. C.K. Kesavalu, passed away on 04.07.2008. One Sri. V. Rajaram, the former Hon'ble District Judge, Tirunelveli, who had drafted the said Will had also passed away during the year 2007. The Petitioners' and the Respondents' mother Smt. K. Govindammal, died on 01.03.2005 and the late, Sri. C.K. Kesavalu, was, therefore, survived by his children the Petitioners and the Respondents herein.

(c)The Petitioners who are the sole beneficiaries under the said Will are the sons and daughters of the deceased, late, Sri. C.K. Kesavalu. The best of their knowledge, the deceased did not leave any other will except the one mentioned above dated 30.04.2001, registered as Document No.22 of 2001 which was the last will and testament of the deceased. The deceased, late. Sri. C.K. Kesavalu, is the absolute owner of the Said Property, that he has bequeathed in terms of the Said Will, since the



TOS.No.28 of 2016

WEB COPY

deceased was vested with the sole and absolute right to dispose-of the said Property by way of a Will, he having acquired title to the same jointly along with his brothers vide Settlement Deed dated 10.02.1951, registered as Document No. 110/1951 which had been executed by his paternal grandfather jointly in their favour and the said Property was thereafter partitioned by the brothers vide Partition Deed dated 08.07.1982, registered as Document No.562/1982, on the file of the Sub-Registrar, Triplicane. The deceased Late Sri. C. K. Kesavalu accordingly became the sole and absolute owner of the Said Property. The amount of assets which is likely to come to the Petitioners' hands does not exceed in the aggregate the sum of Rs. 56,94,000/- (Rupees Fifty Six Lakhs and Ninety Four Thousand only) 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.56,90,000/- (Rupees Fifty Six Lakhs and Ninety Thousand only). That the Petitioners hereby undertake to duly administer the Said Property and credits of the said late. Sri. C.K. Kesavalu and in any way concerning his Will by paying first, his debts and then the legacies therein bequeathed in so far as the assets in the Will extend and to make a full and true inventory thereof and to exhibit the same in this Court within six months



TOS.No.28 of 2016

WEB COPY

from the date of grant of Letters of Administration with the Will annexed to the Petition and also to render to this Court a true account of the said Property and credits within one year from the said date. That the said deceased Sri. C.K.Kesavalu, left the Petitioners and Respondents surviving him as his next of kin according to Hindu Succession Act, 1956. The Petitioners have impleaded all of the next of kin or other persons interested as the Respondents. There is no other next of kin or other persons, interested, who are required to be impleaded.

(d) That only during the year of 2009, the Petitioners came to know about the said Will executed by his father late. Sri. C.K. Kesavalu. Thereafter the Petitioners instead of filing Petition for the grant of Letters of Administration with the Will annexed to the Petition, the Petitioners have mistakenly filed a Petition bearing O.P.SR.No.41004 of 2010 before this Hon'ble Court along with the Original Will for the grant of Probate of the said Will. Since the Petition has been filed under the wrong provision of law, the Registry of this Hon'ble Court has returned the same. Thereafter the First Petitioner, who was having the bundle along with the original Will have misplaced the said original Will. Only now the First Petitioner



TOS.No.28 of 2016

WEB COPY

has traced/found the said Original Will while he has shifted his things/materials from ground floor to first floor of the Said Property.

Accordingly this Petition has been filed for the grant of Letters of Administration with the Will annexed to the Petition. Hence there is a delay in filing this Petition and the delay is neither willful nor wanton but only due to the aforesaid bonafide reasons. The Petitioners being the sole beneficiaries under the said Will of the deceased and as such are entitled to apply to this Hon'ble Court for the grant of Letters of Administration with the Will annexed to the Petition. No application has been made to any District Court or delegate or to any other High Court for probate or any Will of the said deceased or Letters of Administration with or without the Will annexed to his properties and credits. Hence, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.

3.The case of the Defendant/respondents 1 and 2, in a nutshell, as set out in his written statement, is as follows:-

a) The most important fact is that the father of the defendants is not conversant with the English language except to make his signature. The will was cleverly prepared in unknown language by the petitioners and got



TOS.No.28 of 2016

it arranged to register the same without the knowledge of the Defendants.

The defendant's father was not in sound and clear mind during the execution of the will. The recitals of the Will proves that the signature must have obtained by misinterpreting the same to the defendant's father Kesavalu. Knowing pretty well about the contributions and sacrifice of the 1st defendant to the joint family from his young age, his father wouldn't make such a cruel statement on him and 2nd defendant. Making use of the deceased C. K. Kesavalu's ill health and unstable mind, the petitioners misrepresenting the facts and obtained the signature as Will purported to have been executed by the deceased.

(b)As the Will was created without the knowledge of Sri C.K. Kesavalu, no executor was appointed. The witness informed to the defendants that they did not know about the contents of the document. Further the testator of the will died in the year 2007 but the petition for letters of administration filed during December 2014, no reason for delay has been explained in the petition which itself establish that no genuineness in the Will.



TOS.No.28 of 2016

WEB COPY

(c) The respondents strongly deny the existence of the Will and hence the same is not an operative instrument and hence the prayer of the Petitioners is not valid one and they do not have any right excepting the legal heir status at par with the defendants. There was no truth in execution of Will. Since the matters of record and property belongs to ancestral, right of dealing with the property much less of execution of Will is bad in law. It is false and cooked up statement for the purpose of the petition. It is unbelievable statement that the petitioners came to know about the Will only in the year 2009 and also after filing the probate for four years no steps were taken to get it probated. The Will purported to have been executed by the deceased C. K. Kesavalu was not probated by the Hon'ble Court as it is void instrument and therefore bringing the instrument again for Letters of administration is invalid.

(d) The Petitioners have filed this petition when the case on partition was decreed on 12.04.2013 in O.S.No.2027 of 2010 on the file of VI Assistant City Civil Court with the intention to cheat the defendants and to not to get their legitimate share from the estate of their father deceased. There has been no existence of will for the reasons stated above. Hence, the appointment of administrator under Letter of Administration does not



TOS.No.28 of 2016

WEB COPY

arise as the property of deceased is to be shared as per Hindu Succession Act 1956 among the legal heirs inclusive defendants. The Will purported to have been executed by the Deceased Sri C.K. Kesavalu is not having the sanctity of the Will and it is a void instrument as the same was not probated accordingly, petitioners do not entitle to have Letter of Administration and implementation of provisions of the Will. Hence, the relief sought by the plaintiffs is not maintainable either in law or on facts and is liable to be dismissed in limine.

4. On the pleadings of the parties and hearing the learned counsel on either side, the following issue was framed for determination:-

(1) "Whether the Will executed by C.K.Kesavalu on 30.04.2001 is genuine?"

5.On the side of the Plaintiffs, Ex.P1 to Ex.P11 were marked and PW.1 and PW.2 were examined. On the side of the Defendant, no documentary evidence was marked and DW.1 was examined.

6.The learned counsel for the plaintiffs would submit that the suit



TOS.No.28 of 2016

WEB COPY

property is ancestral property. On the demise of Smt. Chinna Govindammal, C.K. Kesavalu and his two brothers became the absolute owners of the said Property and they have executed a Deed of Partition on 08.07.1982, which was registered as Document No.562 of 1982., in terms of which the said Property described as Schedule "A" Property in the said Partition Deed had been allotted absolutely in favour of the Testator late Sri C.K. Kesavalu, the father of the Plaintiffs and Defendants herein. Thus, the Testator late C.K. Kesavalu had become absolute owner of the said Property and accordingly the revenue records has been mutated in the name of Sri. C.K. Kesavalu.

7. It has been further submitted by the learned counsel for the plaintiffs that the said Testator has 9 children, that is, 5 sons and 4 daughters. The Testator C.K. Kesavalu executed a Will 30.04.2001, which was registered as Document No.22 of 2001, in the office of the Sub-Registrar, Triplicane, bequeathing the said Property jointly in favour of the Plaintiffs herein together with life interest for his wife Mrs. Govindammal. The said Will dated 30.04.2001 was witnessed and attested by Mr. C.K. Mohan, younger brother of the Testator and by Mr. V.K. Jayachandran,



TOS.No.28 of 2016

son in law of his brother Mr.C.K. Mohan.

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8.The learned counsel for the plaintiffs would further submit that the Testator was in sound mind, hale & healthy at the time of execution and registration of the aforementioned Will dated 30.04.2001 and the said fact can very well ascertained from the Cross- Examination of DWI-1st defendant herein and PW2 (2nd Attesting Witness in the Will). Further, the Defendants neither maintained cordial relationship with the Plaintiffs nor with their parents. Therefore the Testator has not bequeathed the Said Property in favour of the Defendants.

9) It has been further submitted by the learned counsel for the plaintiffs that the Testator Mr. C.K. Kesavalu died on 02.04.2007 and his wife Mrs. Govindammal, who was vested with life interest in the Said Property has predeceased the Testator on 01.03.2005. The Plaintiffs and the Defendants herein are the legal heirs of the Testator Mr. C.K. Kesavalo. Further one of the attesting witness Mr. C.K. Mohan, younger brother of Testator has also died on 04.07.2008, accordingly only the 2nd attesting witness Mr. V.K Jayachandran has been examined as PW2. After knowing the execution of the said Will, the Plaintiffs instead of filing



TOS.No.28 of 2016

WEB COPY

Petition for the Grant of Letters of Administration, the Plaintiffs have inadvertently filed a Petition bearing O.P.SR.No.41004 of 2010 before this Hon'ble Court along with the Original will for the Grant of Probate of the said Will. Hence, the registry of this Court returned the same. Thereafter the First Plaintiff misplaced the said Original will and only in the year 2015, found the same in the house. At once, this Petition has been filed immediately for the Grant of Letters of Administration with the Will annexed to the Petition. Hence there is a delay in filing this Petition is neither wilful nor wanton but only due to the aforesaid Bonafide reasons.

10.The learned counsel for the plaintiffs would further submit that the Defendants have not challenged the signature of the Testator, who has signed in English Language. The Defendants have challenged only the contents of the Will which are executed in English language. If the Testator was not conversant with the English language, as alleged by the Defendants, then the Defendants should have also challenged the signature of the Testator, which is also signed in English Language. Hence, in the absence of the same, the allegation of the 1st Defendant is wholly untenable and devoid of merits. Further, it is submitted that even though the Testator was an illiterate, the Testator is a musician by profession and



TOS.No.28 of 2016

WEB COPY

he would attend music Katcheri in Chennai and also do performances across India and other countries the said fact is also admitted in the cross examination of DW1. Since the Testator has gone across the world and throughout India to perform his musical Katcheri, the Testator was familiar with English language as he has travelled widely, therefore the Testator has executed the Will and affixed his signature in English.

11.The learned counsel for the plaintiffs would further submit that a Division Bench of Nagpur High Court in “Kuwalal Amritlal v. Rekhlal Koduram” has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that that the document was attested. Further, a Division Bench of the Patna High Court in “Karnidan Sarda v. Sailaja Kanta Mitra” has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of other party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witness were not tested in that way, their evidence is to be ordinarily accepted. Further, the Hon'ble



TOS.No.28 of 2016

WEB COPY

Supreme Court in “Arvind Singh-Vs-State of Maharashtra” reported in (2021) 11 Supreme Court Cases 1 at Paragraph Nos. 62 and 63 uphold the same. Therefore, as per the Judgment of the Hon'ble Supreme Court, when the counsel for the Defendant fails to cross- examine the PW1 and PW2 on the line of the aforementioned allegation, the said allegation cannot be accepted and entertained by this Hon'ble Court. Hence, he seeks this Court to grant Letters of Administration with the Will annexed to the petition as prayed for.

12. Per contra, the learned counsel for the defendant would submit that the father of the defendants is not conversant with the English language except to make his signature in English. The will was cleverly prepared in unknown language by the plaintiffs and got it arranged to register the same without the knowledge of the Defendants. The defendant's father was not in sound and clear mind during the execution of the will. The recitals of the Will proves that the signature must have obtained by misinterpreting the same to the defendant's father Kesavalu.

13.It has been further submitted by the learned counsel for the



TOS.No.28 of 2016

WEB COPY

defendant that the plaintiffs obtained the signature making use of the deceased C. K. Kesavalu's ill health and unstable mind as the Will purported to have been executed by the deceased. The said Will was prepared by the retired judge with the intention to deny the share of the defendants in the unknown knowledge of the deceased C.K.Kesavalu. At the time of execution of the will father of the defendants and plaintiff was at the age of 71 and died at the age of 77 as he died in the year 2007.

14.The learned counsel for the defendant would further submit that as the Will was created without the knowledge of Sri C.K. Kesavalu, no executor was appointed. Further, the witnesses informed to the defendants that they did not know about the contents of the document. Further the testator of the will died in the year 2007 but the petition for letters of administration filed during December 2014 and the delay was not properly explained in the TOS, which itself establish that the Will is not genuine one. There has been suspicious circumstance surrounded in creation of Will and therefore the 1st Plaintiff did not who sought prayer to appoint as administrator did not present himself before the Hon'ble Court as Witness. The plaintiffs by fraudulently creating a will claimed that they are beneficiaries of the estate of the deceased C. K. Kesavalu. The defendants



TOS.No.28 of 2016

WEB COPY

are also legal heirs of the deceased C. K. Kesavalu and they are also entitled to get the estate of the deceased C. K. Kesavalu. The existence and execution of the Will is denied and hence the same is not an operative instrument. Hence the prayer of the Petitioners is not valid one and they do not have any right excluding the legal heir status at par with the defendants.

15.The learned counsel for the defendants would further submit that since the property dealt under the Will is ancestral property not the self acquired property, the deceased C. K. Kesavalu was not having any exclusive right to deal with the property under the will. It clearly indicates that the purported will was forged and manipulated one. The Plaintiffs have initiated the above testament proceedings, when suit for partition was decreed on 12.04.2013 in O.S.No.2027 of 2010 on the file of VI Assistant City Civil Court filed by the 1 defendant, since the purported will was not proved. The suit in O.S.No.2027 of 2010 was filed by the defendants in the year 2010, the purported will of the year, 2001 and their father died in the year 2007. The will is surrounded with suspicious circumstances which



TOS.No.28 of 2016

was not removed by the propunders of the Will.

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16.It has been further submitted by the learned counsel for the defendant that the attesting witness is also not clear on his deposition. The plaintiffs did not come with the proper evidence to prove the delay. Until the suit was filed by the 1st defendant, the plaintiffs have not disclosed about the existence of the Will to the defendants and also not initiated any proceedings to prove the Will. Since the Will purported to have been created one by the plaintiffs kept silent until the suit filed by the 1st defendant. The plaintiffs with the intention of cheat the defendants and to deny their legitimate share from the estate of their deceased father, initiated the above proceedings and without disclosing of the fact of execution of will until filing of the suit. The plaintiffs are not entitled to grant of Letter of Administration and implementation of provisions of the Will. As the estate of the deceased Mr C.K.Kesavalu has to be shared among the legal heirs as per the provisions of the Hindu Succession Act 1956. and hence, the petition may be dismissed.

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



TOS.No.28 of 2016

WEB COPY

18. A perusal of the Will dated 30.04.2001 ie Ex-P1, it can be seen that the said Will was registered one on the file of the SRO, Triplicane having signed by the Testator and attested by two Attesting Witnesses. It is admitted fact that the Testator is the owner of the property even though it is derived from his ancestor. While there is Animus Attestandi in the Will, during the Trial, one of the attesting witness ie. Mr.V.K. Jayachandran, has been examined as P.W.2 . in which he has also confirmed the Will dated 30.04.2001 executed by the Testatrix.

19.Per contra, even though the defendants have raised various contentions of suspicious ground in execution of the said Will, such as the Testator has no knowledge in English, sound state of mind and good health at the time of the execution of the Will and cheated by the plaintiffs, they have not produced any oral and documentary evidence to prove the same. At least, he should have cross examined any individual witness to prove his contention. Despite the defendant has raised the contention with regard to the Testator is not conversant with the English, he himself accept in the Written statement that the Testator would sign in English. Further, the



TOS.No.28 of 2016

WEB COPY

defendant in his cross examination, deposed that his father would attend all Music Katcheri of his troupe all over in India. Even though it has been contended by the defendant that the Testator was not hale and healthy and sound state of mind at the time of execution of the said Will, he is bound to prove the same either by producing any supporting document or examining the oral evidence. Further, the defendant has not filed any documentary evidence with regard to partition suit in O.S. No.2027 of 2010 which is said to have filed by him on the file of VI Assistant City Civil Court.

20. However, when the evidence of the attesting witness PW-2 is perused, he would speak to the effect that he was present on the day of execution of the Will on 30.04.2001 and yet another witness namely Mr.C.K. Mohan, was also present and they saw the testator, putting his signature in the Will and the testator saw them putting their signatures as witnesses and thereby he has also spoken about the attestation of the document, in accordance with law. The evidence of P.W.2 would also go to show that the testator was in a sound and disposing state of mind and was in a good health, at the time of execution of Ex.P1 Will. The said evidence of PW2 would prove the attestation, execution of the Will and also the sound and disposing state of mind of the testator at the time of



TOS.No.28 of 2016

WEB COPY

execution of Ex.P1 Will. The testamentary jurisdiction is invoked only for the purpose of deciding the proof of the Will in order to grant issuance of Letters of Administration. Hence, in the event of failure to produce the oral and documentary evidence on the side of the defendant during the hearing to prove the said Will as fake and fabricated one, the plaintiff has proved the Will dated 30.04.2001 by producing oral and documentary evidence in the manner known to law. Therefore, the dispute in between the defendant and other persons including the plaintiff would not in any way be considered as an impediment for this Court to grant Letters of Administration in favour of the plaintiffs, on the proof of the Will. Accordingly, Issue No.1 is answered in favour of the Plaintiffs and the 1st plaintiff is entitled to grant Letters of Administration in his favour, on the proof of the Will. Since the 1st plaintiff in TOS is entitled to grant Letters of Administration, he shall 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, within a period of three (3) months as required under law.



TOS.No.28 of 2016

WEB COPY

21. In the result, the Testamentary Original Suit is decreed as prayed for. No Costs.

07.02.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Lbm

1. List of Witnesses examined on the side of the Plaintiff:-

1. PW.1 – Mr. C.K. Vasudevan
2. PW.2 - Mr. V.K. Jayachandran

2. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the Original Will dated 30.04.2001 (In custody)
2. Ex.P2 is the Photocopy of the legal heirship certificate dated 27.04.2009.
3. Ex.P3 is the Original death certificate of Mr.C.K. Kesavalu dated 02.04.2007.
- 4.Ex.P4 is Original death certificate of Mrs. K. Govindammal dated 01.03.2005
- 5.Ex.P5 is the Printout copy of death certificate of C.K. Mohan dated 04.07.2008.
- 6.Ex.P6 is the Original affidavit of Mr. V.K. Jayachandran dated 15.12.2014.



TOS.No.28 of 2016

WEB COPY

7.Ex.P7 is the Photocopy of the Voter ID of Mr.V.K. Jayachandran.

8.Ex.P8 is the Photocopy of the Aadhaar card of Mr.V.K. Jayachandran.

9.Ex.P9 is the Photocopy of the PAN card of Mr.V.K. Jayachandran.

10.Ex.P10 is the Signature found in the last of Ex.P1, Will (Will in custody)

11. Ex.P11 is the Witness signature found in the reverse page of Ex.P1, Will (Will in custody)

3. List of Witsesse examined on the side of the Defendant:-

DW.1 – Mr. C.K. Raghpathy

4. No list of Exhibits is marked on the side of the Defendant:-

07.02.2024



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TOS.No.28 of 2016

A.A.NAKKIRAN, J.

Lbm

Pre-Delivery Judgement in
TOS.No.28 of 2016

07.02.2024