



T.O.S.No.13 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

T.O.S.No.13 of 2019

P.V.Srinath Yeshwanth

.. Plaintiff

..Vs.

- 1.W.S.Jayaprakash
- 2.Ms.B.Rathnamala
- 3.Ms.W.S.Manjula
- 4.Ms.S.Jhansi
- 5.P.Bhavani Palani
- 6.Ms.N.Vasanthi Nandagopal
- 7.Mrs.Renuka Rajagopal
- 8.Mrs.Madhu Venkat
- 9.Mrs.Radhika Girikumar
- 10.Sri Sathya Sai Central Trust, Puttaparthi

... Respondents

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in respect of the last Will and Testament of the deceased W.S.Shanthi Devi. Against this petition, a Caveat and supporting affidavit was filed by the Caveators. As per order of this Court, the Original Petition No.466 of 2015 was converted into Testamentary Original Suit No.13 of 2019.



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For Plaintiff : Mr.K.V.Babu
For Defendants : Mr.A.P.Loganathan
for D.1 to D.4 and D.6
Mr.K.P.Kodieswaran
for D.5

J U D G M E N T

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased W.S.Shanthi Devi.

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

The plaintiff is the sole executor, appointed by W.S.Shanthi Devi, who executed her last Will and Testament on 12.12.2007 and a Codicil dated 14.05.2008. The said testatrix W.S.Shanthi Devi died on 14.05.2011. The testatrix was not blessed with any issues and her husband Mr.W.S.Venkataramanjulu also predeceased her. Under the Will dated 12.12.2007, the testatrix had appointed her brother P.G.Vivekanandam and/or her nephew P.V.SrinathYeshwanth to be the executors of the said Will. The executors have filed Original Petition for grant of Probate.



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3. Pending Original Petition, the respondents 1 to 9, who are the nephews and nieces of the testatrix, were impleaded as parties and the 10th respondent, Sri Sathya Sai Central Trust, Puttaparthi has been impleaded, being one of the beneficiaries under the Will. The petition has been filed, seeking to prove the Will and Codicil of late W.S.Shanthi Devi and Probate be issued thereof.

4. Pending the proceedings, the first executor passed away and therefore, an amendment application has been taken out to record the death of the first petitioner, who died on 05.03.2013.

5. Subsequent to the receipt of the notices, the respondents have filed caveat. Respondents 1 to 3, 5, 8 and 9 have filed caveats and the Original Petition was therefore directed to be converted into a Testamentary Original Suit. Thereafter, as defendants, the caveators have filed the written statement, contending that the Will executed by W.S.Shanthi Devi dated 12.12.2007 was true, however, the Codicil was not a genuine document and infact allege that the Codicil was a forged instrument and was not valid in the eye of law. The defendants have also submitted that the executors are not in possession of the original registered Will dated 12.12.2007, but only possessed the Codicil dated



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14.05.2008 and therefore, the Codicil ought to be a fabricated document.

Further, according to the defendants, the executors have not shared the existence of the Codicil with the defendants on the demise of the testatrix on 14.05.2011. The defendants have further stated that the executors have been dragging the matter for more than ten years and they have not acted in the interest of the estate. The defendants have further stated that both the attesting witnesses never signed the alleged Codicil and they refused to give necessary affidavit accepting the due execution of the Codicil. The defendants have also stated that both the witnesses to the Codicil are willing to depose before the Court about the rank forgery of the Codicil and on these grounds, the defendants pray for dismissal of the testamentary original suit.

6. On 19.10.2022, the following issues were framed:-

(i) Whether the deceased Mrs.W.S.Shanthi Devi had executed her last Will and testament on 12.12.2007 at Chennai?

(ii) Whether the deceased Mrs.W.S.Shanthi had executed Codicil on 14.05.2008?



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(iii) *Whether Codicil dated 14.05.2008 is a forged document?*

(iv) *Whether the Will and Codicil were executed by the testatrix while she was in sound and disposing state of mind without being in a suspicious circumstances?*

(v) *Whether the plaintiff is entitled for the issuance of probate in respect of Will and Codicil?*

(vi) *To what other reliefs the plaintiffs are entitled for?*

7. The executor P.V.Srinath Yeshwanth has been examined as P.W.1 and through him, the death certificate of W.S.Shanthi Devi has been marked as Ex.P.1; Certified copy of the Will dated 12.12.2007 executed by W.S.Shanthi Devi has been marked as Ex.P.2; The original Codicil dated 14.05.2008, handwritten by W.S.Shanthi Devi has been marked as Ex.P.3; Affidavit of Assets has been marked as Ex.P.4; and the Death Certificate of the other executor P.G.Vivekanandam, who is none other than the father of the other executor viz., P.V.Srinath Yeswanth/P.W.1 has been marked as Ex.P.5.



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8. One of the attesting witnesses Mrs.Chandra has been summoned on an application by the plaintiff and in obedience of the subpoena issued to her, she has appeared and deposed before the Court to speak about the attestation of the Will and Codicil.

9. On the side of the defendants, 6th defendant Mrs.Radhika Girikumar, was examined as D.W.1 and no documents have been exhibited on the side of the defendants.

10. I have heard Mr.K.V.Babu, learned counsel for the plaintiff and Mr.A.P.Loganathan, learned counsel for the defendants 1 to 4 and 6 and Mr.K.P.Kodieswaran, learned counsel for the fifth defendant.

11. The relationship between the parties is not disputed. Equally, the factum of the testatrix W.S.Shanthi Devi executing her Will is also admitted by the defendants. It is only the Codicil, executed by W.S.Shanthi Devi, which is in dispute. According to the defendants, the said Codicil was never executed by W.S.Shanthi Devi, the testatrix and it is a rank forgery. In fact, the defendants, despite filing a written statement, have not disputed the truth and genuineness



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of the Will dated 12.12.2007, marked as Ex.P.2.

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12. The testatrix W.S.Shanthi Devi has executed and registered a Will dated 12.12.2007 in the presence of two witnesses. One of the witnesses to the Will viz., D.Chandra is also a witness to the Codicil, handwritten by W.S.Shanthi Devi herself. The only deviation made in the Codicil is that under the Will, item No.1 viz., Flat bearing No.A1 in the first floor of Justice W.S.K.Enclave at No.32, Langs Garden Road, Mount Road, Chennai-600 002 was directed to be sold and distributed equally to five children of the respective legal heirs of testatrix's late husband W.S.Venkataramanjulu's brother W.S.Venugopal. However, in the Codicil, the bequeath has been altered, though retaining the direction to sell the property insofar as distribution of the sale proceeds, it was directed to be effected amongst 9 children of the testatrix husband's brothers viz., late M.S.Varadharajulu and M.S.Venugopal.

13. Similarly, under the Will, item No.2, viz., Flat No.B.2, Second Floor in Justice W.S.K.Enclave at No.32, Langs Garden Road, Mount Road, Chennai-600 002 was directed to be sold and distributed equally to all the four children or their respective legal heirs of late W.S.Venkataramanjulu's brother, late



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W.S.Varadharajulu. The said flat, under the Codicil, was bequeathed to Sri Sathya Sai Central Trust Prasanthi Nilayam, Puttaparthi, Ananthapur District. The above are the only changes that has been brought about by way of Codicil to the Will in Ex.P.2.

14. The plaintiff, who has been examined as P.W.1, has deposed in chief examination, by way of proof affidavit that W.S.Shanthi Devi had executed her last Will on 12.12.2007 and the said Will was duly registered as Document No.89 of 2007 on 14.12.2007 on the file of Sub Registrar, Periamet. Further, he has stated that the testatrix was a staunch devotee of Sri Sathya Sai Baba, Puttaparthi and that was the reason why the Codicil came to be executed, bequeathing one additional flat in favour of Sri Sathya Sai Central Trust, Puttaparthi. He has further sated that all the defendants are also beneficiaries under the Will and Codicil and only in order to grab the entire property of the testatrix, they have opposed the grant of probate and also prevented the attesting witness from adducing evidence before the Court. He has also stated that both the executors viz., himself as well as his father are neither beneficiaries under the Will nor the Codicil. He has also stated that after the demise of the testatrix, the defendants have taken the custody of her entire jewels and they have not



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given any account for the same. He has also stated that as an executor, he is bound to fulfill the wishes of the testatrix W.S.Shanthi Devi and it is only in such circumstances, he has filed the Original Petition for issuance of Probate initially, which was subsequently converted as a Testamentary Original Suit, at the instance of the defendants who opposed the grant by filing caveat.

15. In his cross examination, P.W.1 has stated that the testatrix is his aunt and own sister of his father, who was the other executor. He has also denied the suggestion that in the absence of the legal heir certificate of the husband of the testatrix, the Will and Codicil are null and void. He has further stated that the testatrix inherited three immovable properties from her late husband M.S.Venkataramanjulu. He has also stated that the Will was drafted by the testatrix herself and also stated that the testatrix was living in Puttaparthi and she was keeping good health without requiring any help, care or assistance. He has denied the suggestion that the signature of the witnesses in the Codicil apparently differed from the Will. He has also denied the suggestion that the Codicil was brought about by undue influence and coercion and that the Codicil is a rank forgery. He has specifically stated that the Codicil was in the handwriting of the testatrix W.S.Shanthi Devi herself and the defendants have



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also accepted the same before the members of the Sathya Sai Organisation.

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16. One of the attesting witnesses, D.Chandra was summoned at the instance of the plaintiff and examined as C.W.1. In her examination in chief, she has stated that the testatrix was a Sai Baba devotee and that she came in contact with the testatrix and used to attend bajans and also go to Puttaparthi for bajans and prayers. She has also stated that she knew the testatrix for about 30 years. C.W.1 has also stated that she attested Ex.P.2 Will as one of the attesting witnesses, at the request of W.S.Shanthi Devi and the other attesting witness was her husband Mr.Duraivelu. She has affirmed that she went to the Sub Registrar's Office for registering Ex.P.2 Will and she witnessed the execution of the Will by the testatrix and similarly, she and her husband attested Ex.P.2 Will and it was only in the presence of testatrix. Similarly, she has also spoken about the due execution of the Codicil Ex.P.3.

17. In cross examination, C.W.1 was confronted with only one question stating that her signature in both Ex.P.2 and Ex.P.3 do not appear to be one and the same, to which, she has answered that she is not in a position to say which one is her signature.



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18. The execution and attestation of the Will and the Codicil has been clearly established by evidence of C.W.1. Even though originally the attesting witnesses have not cooperated with the plaintiff/executor to come forward to file their affidavits of attesting witnesses, on being summoned by the Court, C.W.1 has spoken about her association with testatrix and also the factum of execution of Ex.P.2 Will as well as Ex.P.3 Codicil.

19. C.W.1 was 84 years at the time of deposing before the Court in October 2023 and therefore, an isolated answer that she is not able to identify which is her signature, when confronted with Ex.P.2 Will and Ex.P.3 Codicil, may not be fatal to the case of the plaintiff.

20. The evidence of C.W1 has to be read as a whole. She has admitted that she was acquainted with the testatrix for about three decades and their association was only because of both being Sai Baba devotees. She has also deposed that the other attesting witness is none other than her husband Mr.Duraivelu. Similarly, even in the Codicil, the witnesses are her husband and herself. Her evidence satisfies the requirements of Section 63(c) of the Indian



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Succession Act.

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21. I do not find anything in cross examination to discredit the evidence of C.W.1. Moreover, when the defendants have specifically taken a plea in the written statement that the Codicil is a forged document, the burden is upon the defendants to establish the plea of forgery. No doubt, as a propounder, the executor is under a primary duty to satisfy the Court with regard to due execution and attestation of the Will and Codicil. From the evidence of P.W.1 and C.W.1, the said burden stands discharged and thereafter, the burden shifts to the defendants to establish their plea of forgery.

22. I do not find any evidence whatsoever let in by the defendants that the Codicil was a forged document. In fact, P.W.1 has specifically stated that Codicil was handwritten by the testatrix herself and I do not even find a suggestion put to P.W.1 or C.W.1 that the said Codicil/Ex.P.3 was not in the handwriting of testatrix/W.S.Shanthi Devi.

23. Similarly, the defendants have not even suggested to C.W.1 that the handwriting or signatures are not that of W.S.Shanthi Devi. The sixth defendant



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has deposed on behalf of the defendants as D.W.1 and from the evidence of D.W.1, I do not find anything material to support the defence set up that the Codicil is a forged document. She has in fact stated that she has not even seen the copy of the Will and Codicil. She has also admitted the fact that the plaintiff is not a beneficiary under Ex.P.2 Will and Ex.P.3 Codicil. She also admitted to the fact that the testatrix died only three years after execution of Ex.P.3 Codicil. She has also stated that she alleges the Codicil to be forged only because of the fact that the attesting witnesses had stated that they have not signed the Codicil as witnesses. However, from the evidence of C.W.1, it is clear that C.W.1 and her husband have attested not only the Will, but also the Codicil.

24. Without even seeing Ex.P.2 Will and Ex.P.3 Codicil, the sixth defendant has chosen to allege that the Codicil was a forged document. Thus, it is clear that the intention of the defendants is only speculative in nature. If really, the Codicil was forged, as contended by the defendants, they ought to have taken necessary steps, as available in law, to establish that the Codicil was forged. However, there is absolutely no step taken by the defendants in this regard. On the contrary, C.W.1 has clearly spoken about the due execution and



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attestation of not only Ex.P.2 Will, but also Ex.P.3 Codicil.

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25. The plaintiffs have clearly discharged the burden upon them and there are absolutely no suspicious circumstances surrounding the due execution and attestation of the Will and Codicil. In such circumstances, when the defendants plead forgery, it is for the defendants to establish the plea of forgery, by letting in satisfactory oral and documentary evidence, which is evidently absent in the present case.

26. Learned counsel for the plaintiff relies on the following decisions:

(i) *Ashok Baury vs State* reported in (2021 SCC Online Del 1248)

(ii) *Govindan Chettiar vs Akilandam and Ors* reported in (1997 SCC Online Mad 209)

(iii) *Meena Pradhan and Ors vs Kamla Pradhan and Ors* reported in (MANU/SC/1035/2023)

27. In *Ashok Baury vs State* reported in (2021 SCC Online Del 1248), the High Court of Delhi has referred to the decision of *H.Venkatachala*



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Iyanger vs B.N.Thimmajamma reported in **AIR 1959 SC 443**, wherein, the Hon'ble Supreme Court has held that when a caveat is filed, alleging the exercise of undue influence, fraud or coercion, then, such pleas have to be proved only by the caveator and when there is proof of signature, everything else is implied till the contrary is proved. This ratio of Hon'ble Supreme Court has been followed in the case of **Ashok Baury vs State reported in (2021 SCC Online Del 1248)**.

28. This Court in **Govindan Chettiar vs Akilandam and Ors reported in (1997 SCC Online Mad 209)**, held that when the attestors have spoken about affixing of signatures by the deceased and also their attestation, by appreciating credibility of the witness, Court cannot confine itself to what they have spoken, but, it is bound to look into the surrounding circumstances in coming to the conclusion whether the witness has spoken regarding the true version.

29. I have already discussed the evidence of C.W.1 and though, initially, the said attesting witness did not cooperate with the propounder, on being summoned, she has spoken about the circumstances under which the Will and Codicil were executed and therefore, I do not find any reason to disbelieve the



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evidence of C.W.1.

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30. In *Meena Pradhan and Ors vs Kamla Pradhan and Ors reported in (MANU/SC/1035/2023)*, the Hon'ble Supreme Court has held that apart from statutory compliance of mandate under Section 63(c) of the Indian Succession Act, the propounder has to prove that the testator signed the Will out of his own free Will, at the time of execution, he had a sound state of mind and he was aware of the nature and effect thereof and that the Will was not executed under any suspicious circumstances. The Hon'ble Supreme Court also held that the person, who alleges fraud, fabrication, undue influence etc., has to prove the same and that suspicious circumstances must be real, germane and valid and not merely the fantasy of the doubting mind.

31. Here, as already seen, D.W.1 has clearly deposed that she has not even seen Ex.P.2 Will and Ex.P.3 Codicil. Therefore, her evidence is clearly one that can attract the phrase “*the fantasy of the doubting mind*” and without even looking into the contents of the Will and Codicil, D.W.1 has chosen to launch an attack on the truth and genuineness of the Codicil.



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32. Though the learned counsel for the defendants would submit that the plaintiffs have not filed the death certificate and the legal heir certificate of the husband of the testatrix and therefore, the testatrix cannot inherit the properties, I am unable to countenance the said argument. The fact that the husband of the testatrix died is not even disputed. A legal heirship certificate does not confer title to the properties left behind by the deceased. The legal heirship certificate is merely issued setting out the persons who are the legal heirs of the deceased persons under the relevant succession laws and therefore, I am unable to agree with the submissions of the learned counsel for the defendants that the testatrix cannot inherit the properties in the absence of the death certificate and legal heir certificate of her husband.

33. From the evidence of C.W.1, the Will as well as the Codicil have been proved as required under Law and there being absolute no suspicious circumstances surrounding due execution and attestation of both Will and Codicil, I see no reason as to why the surviving executor should be disentitled to grant of probate of the Will and Codicil.

34. In view of the above facts, I am of the view that the plaintiff has



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proved the execution and attestation of the Will and Codicil. Hence, the plaintiff is entitled for the issuance of probate in favour of him. All the issues are thus answered in favour of the plaintiff. It is brought to my notice by Mr.K.V.Babu, learned counsel for the plaintiff that despite directions of the learned Master, the defendant has not paid the Court fee. It is made clear that the plaintiff is at liberty to pay the necessary Court fee and recover the same from the contesting defendants.

35. In the result:

(i) This Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate with the Will dated 12.12.2007 and Codicil dated 14.05.2008, annexed.

(ii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

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Index : Yes/No
Speaking/Non-speaking order
sr

18/20



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Witnesses examined on the side of the plaintiff:

P.W.1. - P.V.Srinath Yeshwanth

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	14.05.2011	Death Certificate of W.S.Shanthi Devi.
2.	P-2	12.12.2007	Last Will and Testament executed by W.S.Shanthi Devi.
3.	P-3	14.05.2008	Codicil
4.	P-4	28.02.2013	Affidavit of Assets
5.	P-5	05.03.2013	Death Certificate of P.G.Vivekanandam
6.	P-6	28.12.2012	Rejoinder issued by Defendant Counsel to Plaintiff Counsel
7.	P-7	19.10.2012	Notice issued by Defendant Counsel to plaintiff
8	P-8	08.12.2012	Reply notice issued by Plaintiff Counsel to Defendant Counsel
9	P-9	10.01.2013	Letter issued by Plaintiff Counsel to the Attesting Witness

Witnesses examined on the side of the defendants

D.W.1. - Mrs.Radhika Girikumar

Exhibits produced on the side of the defendants: Nil.

Witness examined on the side of the Court

C.W.1 - Chandra



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P.B.BALAJI,J.,

sr

PRE-DELIVERY JUDGMENT IN
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