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C.M.A.(MD) No.886 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:
27.08.2024

Pronounced on:
04.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.886 of 2021

J.Edwin Victor

... Appellant

Vs.

Nil

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 96 read with Order XLIII of Civil Procedure Code to set aside the judgment and decree dated 16.08.2019 passed in Probate.O.P.No.498 of 2017 on the file of the Principal District and Sessions Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.S.Suresh Kumar

For Respondent : Nil

J U D G M E N T

The appellant, aggrieved by the dismissal of his petition filed under Section 276 of the Indian Succession Act, praying for an order of probate of the 'Will' executed by his sister, has preferred the instant appeal.



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2. The appellant sought for grant of probate for an unregistered 'Will' dated 09.09.2011 executed by his sister by making the following averments:

- (a) The appellant is the brother of Late.Jayabai, w/o Late.Raju;
- (b) The said Jayabai died on 17.11.2011, leaving her husband Raju, as a sole legal heir and the said Raju died on 04.10.2012;
- (c) The said Jayabai executed an unregistered 'Will' dated 09.09.2011 bequeathing her self earned movable and immovable properties in favour of the appellant.
- (d) There are no other legal heirs for the deceased Jayabai.

3. The appellant examined himself as P.W.1 and a witness to the 'Will', one S.Marimuthu as P.W.2, besides marking Exs.P1 to P9.

4. The Trial Court dismissed the petition, on the ground that the boundaries in the schedule describing the immovable property in the 'Will' varied with the boundaries mentioned in the sale deed, by which, the deceased testator purchased the properties; and that the schedule in the 'Will' has been struck out with a pen and hence, the 'Will' dated 09.09.2011 is suspicious and therefore, the appellant is not entitled to



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grant of probate.

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5. The point for consideration in the instant appeal is '*Whether the appellant is entitled to an order of probate for the 'Will', dated 09.09.2011 executed by his sister Late.Jayabai?*'.

6. The appellant examined himself as P.W.1 and marked the 'Will' executed by Jayabai in his favour. The deceased testator had affixed her signature in the presence of two witnesses, scribe and Notary Public. One of the witnesses, namely, S.Marimuthu was examined by the appellant as P.W.2. P.W.2 had clearly deposed that the testator had signed the 'Will' in the presence of witnesses including himself and the witnesses signed the 'Will' in the presence of the testator. The appellant had also established the death of Jayabai and her husband Raju by marking Exs.P2 and P3/Death Certificates. The appellant has also deposed that there are no other legal heirs of the deceased Jayabai, who could possibly have any interest in the properties bequeathed to him. Therefore, this Court is of the view that the appellant had proved the 'Will' executed by the testator.

7. However, it is seen that the Trial Court had dismissed the petition



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for grant of probate, on the ground that a portion of the schedule of the property has been struck out with a pen. On perusal of the original 'Will', this Court finds that there is a line cutting across the portion of the schedule of the property. However, the said line does not suggest that the 'Will' is suspicious or that the schedule is wrong. In any event, the description of the property is clear in the 'Will'. Merely because, there is a line, which is innocuous and does not suggest anything the 'Will' cannot be said to be invalidated.

8. The second reason given by the Trial Court for the rejection of the 'Will' is that there is a discrepancy in the boundaries mentioned in the 'Will' as there is variation with the boundaries mentioned in the sale deed. On perusal of the 'Will', it is seen that the survey numbers and other description with regard to the village and taluk, where the property is situated, have been clearly mentioned and there is no discrepancy or difficulty in identifying the property. That apart, in the schedule while describing the boundaries to the property, it is stated that the property is bounded on the west by the property of the wife of one Chellappa, wherein it belongs to the said Chellappa. When the description of the property is otherwise clear and there is no ambiguity, this minor



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discrepancy cannot invalidate the 'Will'. Therefore, this Court is of the view that the appellant has proved the execution of the 'Will' and is, therefore, entitled to grant of probate of the 'Will', though the probate of the 'Will' executed by a Christian is not required, statutorily.

9. In the result, this Civil Miscellaneous Appeal is allowed by setting aside the judgment passed in Probate.O.P.No.498 of 2017 by the Principal District and Sessions Judge, Kanyakumari at Nagercoil, and the appellant is entitled to an order of probate of the 'Will' dated 09.09.2011 executed by his sister.

04.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:
1. Principal District and Sessions Judge,
Kanyakumari at Nagercoil.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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