June Beale and Others Vs. -----

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Court : Chennai

Decided On : Dec-01-2015

Judge : C.S. Karnan

Appeal No. : C.M.A.No. 1028 of 2013 & M.P.No. 1 of 2013

Appellant : June Beale and Others

Respondent : -----

Judgement :

(Prayer: Civil Miscellaneous Appeal is filed under Section 299 of the Indian Succession Act, 1925 and under Order XLI Rule 1 r/w Section 96 of the Code of Civil Procedure, 1908, to set aside the Order, dated 18.10.2012 in O.P.No.15 of 2012, on the file of the learned District Judge of Nilgiris at Udhagamandalam and allow the petition as filed in the interests of justice.)

1. The appellants have preferred the present appeal against the Order, dated 18.10.2012, passed in O.P.No.15 of 2012, by the learned District Judge of Nilgiris at Udhagamandalam.

2.The short facts of the case are as follows:-

The appellants had filed an original petition, in O.P.No.15 of 2012, before the learned District Judge of the Nilgiris, Udhagamandalam, seeking letters of administration, in their favour, to the Last Will of the deceased Teresa Bullmore, dated 14.12.2005, registered as document No.73 of 205, in the Office of the Sub-Registrar of Coonoor, to have effect throughout the State of Tamil Nadu.

3. According to the appellants, Teresa Bullmore was a resident of Villa Moore ?, Mount Pleasant, Coonoor-2, the Nilgiris, and she died, on 07.10.2011, at S.B.T.Hospital, Coimbatore Kidney Foundation, Coimbatore. At the time of her death, she left behind certain movable and immovable properties in India. She had purchased immovable properties under six separate Sale Deeds, dated 14.06.1974, 19.09.1985, 22.10.1986, 16.04.2003 and 21.04.2004, and registered as document Nos.632 of 1974, 1317 of 1985, 1128 of 1986, 1129 of 1986, 713 of 2003 and 712 of 2004 respectively, in the Sub-Registrar's Office at Coonoor. On the land purchased by her as stated above, she had constructed a building. She was residing in a portion of the said building and she had leased out the remaining portion to a Trust, namely, Mrs.T.Bullmore's Educational Trust. On 14.12.2005, she had executed her Last Will and Testament and registered it as document No.73 of 2005, in the Sub-Registrar's Office at Coonoor, in the presence of two attesting witnesses, namely, K.K.Devan and M.Packianathan. As per the said Will, she had made diverse bequests to the persons mentioned as legatees therein. Subsequently, on 07.10.2011, she died testate, without altering or cancelling the aforesaid Will, dated 14.12.2005.

4. Further, the appellants had submitted that since the said Teresa Bullmore did not appoint any executor under the said Will, they, to whom all her immovable assets had been bequeathed, had applied for letters of administration. The deceased was a widow with no issue and she left them, who are the major beneficiaries under the Will, as her immediate relatives. The other near relatives, to whom some movables have been bequeathed, are:

Sl.No.	Name	Age	Relationship with deceased
1	Dawn Wheatly	55	Niece

2	Jennifer Isaacs	57	Niece
3	Cheryil Dayalan Nee Otter	49	Niece
4	Judith Sandhurts	36	Grand Niece

5. Further, the appellants had submitted that all the properties and credits, which the deceased had possessed of or was otherwise entitled to at the time of her death, which had come or were likely to come to them and sofar as they had been able to ascertain or were aware, there were no property and credits other than what were specified in the Annexure-A of the affidavit accompanied with the original petition and in case of discovery of other assets, they undertook to pay the requisite succession duty on that account. They had also paid a Court fee of Rs.50/- on the original petition as prescribed under Schedule-II, Article 11(k)(ii)3) of the Tamilnadu Court Fees and Suit Valuation Act, 1955. They had estimated the value of the assets, which were likely to be at Rs.1,46,50,000/- and the net amount of the said assets, after deducting all items, which they were by law entitled to deduct, was Rs.1,20,00,000/-. According to them, there was no other property or credit of the deceased in the Indian Union other than what had been mentioned in the Annexure-A of the affidavit accompanied with the original petition. The value for which succession duty payable was Rs.1,20,00,000/- and the succession duty payable for the said value was Rs.3,60,000/-. They had also undertaken to duly administer the property and credits of the said Teresa Bullmore and to make a full and true inventory thereof and exhibit the same before the Lower Court within six months from the date of grant of letters of administration of the said Will and to render a true and correct account of the said properties and credits within one year from the said date. Hence, for all the reasons, they had filed original petition seeking letters of administration to them for the said Will.

6. The Collector of Nilgiris had filed his objection statement objecting that the original petition was, at the outset, not maintainable either in law or on facts. The appellants were permanent residents of Canada and Australia and hence the

Lower Court had no territorial jurisdiction to entertain the petition for granting letters of administration. They were required to prove that the deceased Teresa Bullmore was the owner of the properties bequeathed under the Will, dated 14.12.2005. He had denied the execution of the alleged Will and he had called upon the propounder of the Will to prove the same. Since one of the attesting witnesses, namely, Packianathan was an employee of the said Teresa Bullmore, the execution of the alleged Will could not be proved through him and it must be proved through an independent witness. The inquiries conducted by the Revenue Authorities revealed that the deceased had left children at Canada and they were not impleaded as parties and hence the petition was not maintainable. The appellants had not truly set forth all the material particulars of movables and immovables of the deceased. From the inquiries by the Revenue Officials it was revealed that the deceased had other properties which were deliberately left out in order to escape from succession duty. The original petition suffered from bona fides and substance for the relief sought for and the appellants had no locus standi to file the original petition. Hence, for these reasons, the District Collector had prayed for dismissal of the original petition.

7. The learned Trial Judge, after considering the averments made by the parties, evidence of appellants' side witnesses and perusing the exhibits marked by them, by Judgment dated, 18.10.2012, dismissed the original petition on the ground that all the relatives, beneficiaries of the deceased had not been impleaded in the original petition, their rights and amount payable to them had not been clearly mentioned and all the movables and liquidates, mentioned in Ex.P1 Will, had not been included in the assets of the deceased. Challenging the same, the appellants have filed this civil miscellaneous appeal.

8. The highly competent counsel appearing for the appellants has submitted that Teresa Bullmore, executrix of the Will, was residing at Villa Moore, Mount Pleasant, Coonoor-2, the Nilgiris. The appellants herein are nieces and nephew of the said Teresa Bullmore. She had executed her Last Will, on 14.12.2005, in their favour and registered it on the file of the Sub-Registrar's Office at Coonoor as document No.73 of 2005, in the presence of two attesting witnesses, namely, M.Kari Gowder and M.Packianathan. She died, on 07.10.2011, due to illness. At

the time of execution of the said Will, she was aged about 72 years. In order to prove her death, copy of her death certificate was marked as Ex.P2. Before executing the said Will, she had cancelled her previous Will, dated 22.10.1991. She was a highly literate person and at the time of executing the Will, she was in sound and conscientious mind with good physical and mental health. She had executed the said Will out of her own free will and volition, with view to settle her assets without anybody's pressure or influence and therefore, the said Will is suitable for probate before the Court of law.

9. Further, the highly competent counsel has submitted that the executrix of the said Will was a widow with no issue. She left the appellants herein as her immediate relatives. However, she had bequeathed some movables to other relatives, namely, Dawn Wheatly, Jennifer Isaacs, Cheryil Dayalan Nee Otter and Judith Sandhurts. Since, she had not appointed any executor under the said Will, the appellants, to whom all her immovable assets have been bequeathed, are entitled to letters of administration in order to maintain her immovable assets. But, the learned Trial Judge had erroneously declined to grant the same even after establishing the case without any lacuna or shortcoming.

10. The highly competent counsel has further submitted that the appellants had filed Annexures-A and B along with their affidavit, wherein they had mentioned the value of movables and immovables of the executrix of the Will. The appellants also undertook to pay the requisite succession duty in the event of discovering of any other assets. The District Collector had filed his objection statement without any documentary proof or material particular. One of the attesting witness, namely, K.K.Devan expired on 08.06.2007 and hence the other sole surviving witness, namely, M.Packianathan was examined as P.W.2. The executrix of the Will had not left any issue (children), as stated by the District Collector, in Canada or any other place.

11. Further, the very competent counsel, in support of his contentions, has placed reliance upon the decision in Ramachandran, R. v. G.Hariharan, reported in2001 (2) CTC 713. The head notes of the said decision reads as follows:

Succession Act, 1925, Sections 263 and 317 “ Revocation of Probate “ Challenge of validity and genuineness of Will “ Deceased executed Will on 12.9.1975 which was registered “ Subsequent will executed on 4.6.1984 not registered “ Testator died on 4.12.1990 “ Petition for probate of Will was filed on 22.1.1991 and Probate was granted on 26.09.1995 of Will dated 4.6.1984 “ No property bequeathed to person who is interested in Probate of deceased either in registered or unregistered Will “ Such person filing application for revocation of Probate on ground that Will dated 4.6.1984 was forged one and suspicious circumstances surround execution of Will “ Application for revocation of Will need not be allowed in all cases merely because genuineness of Will is questioned “ Each case has to be considered on its own merits “ Person who has asked for revocation and annulment of Will has not been bequeathed any property by Testator and he has admitted validity of Will dated 12.09.1975 “ No purpose would be served by revoking Probate granted in respect of Will dated 4.6.1984 “ Refusal to revoke Probate granted is proper and does not call for interference.

Madras High Court Original Side Rules, 1956, Order 14 Rule 8, Order 25 Rule 62 “ Application filed for revocation of Probate granted already and for issue of citation of grantee “ Rules do not require that petition for Probate should be registered as Suit when once person interested in property of deceased files Affidavit setting out grounds for revocation even without Court passing Order revoking Probate granted already.

Probate proceedings “ Probate of Will “ Affidavit of Assets “ Under-valuation of Assets of deceased in Affidavit of Assets “ under-valuation of Estate of deceased is to be taken care of by Revenue Authorities “ Safeguards are found in Tamil Nadu Court fees and Suit Valuation Act, 1955, to meet such contingency “ Probate Court is not concerned with under-valuation of Assets “ Probate cannot be revoked or annulled on ground under-valuation of Assets of deceased in Affidavit of Assets filed under Probate proceedings. ?

Hence, for all these reasons, the highly competent counsel has prayed this Court to allow the appeal.

12. The learned Government Advocate (Civil Side) has submitted that the Government Pleader of the Nilgiris District had filed objection statement on behalf of the District Collector, after perusing the registered Will, Ex.P1 and other documents. Therefore, the learned Government Advocate has prayed for dismissal of the above appeal.

13. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the Will, dated 14.12.2005, has been registered as document No.73 of 2005, in the Sub-Registrar's Office at Coonoor, wherein the Late.Teresa Bullmore had executed and signed the Will in front of the Public Officer, namely, Sub-Registrar. The said Will had been duly attested by two witnesses and drafted by three highly competent advocates. As such, the said Will, executed in favour of the appellants herein, is a genuine one and hence they are entitled to receive letters of administration for the said Will. Further, this Court is of the view that the said Will has been executed in the Public Office, on 14.12.2005, and the executrix of the Will was hale, healthy and mentally sound at that time. Therefore, the above appeal possesses sufficient force to allow it and hence the same is liable to be allowed.

14. In the result, the civil miscellaneous appeal is allowed and the Order, dated 18.10.2012 passed in O.P.No.15 of 2012, by the learned District Judge of Nilgiris at Udhagamandalam, is set aside. This Court grants letters of administration, to the appellants herein, for the Last Will of Late.Teresa Bullmore, dated 14.12.2005, registered as document No.73 of 2005, on the file of the Sub-Registrar's Office at Coonoor, to take effect throughout the State of Tamil Nadu. Registry is directed to collect necessary stamp duty from the appellants herein and issue the letters of administration at the earliest, subject to receiving confirmation from the District Collector, the Nilgiris District, with regard to value of the assets. No costs. Consequently, connected miscellaneous petition is closed.