

Premavathi, Vs. Sundararajan,

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Court : Chennai

Decided On : Jun-29-2009

Reported in : (2009)6MLJ560

Judge : K. Raviraja Pandian and ;P.P.S. Janarthana Raja, JJ.

Acts : [Indian Succession Act, 1925](#) - Sections 63; [Evidence Act, 1872](#) - Sections 68

Appeal No. : Original Side Appeal No. 387 of 2001

Appellant : Premavathi, ;rajeswari, ;maheswari and ;mallika

Respondent : Sundararajan, ;srinivasan and ;padmanabhan

Advocate for Def. : T.V. Ramanujam, Sr. Counsel for T.V. Krishnamachari, Adv.

Advocate for Pet/Ap. : AR.L. Sundaresan, Sr. Counsel for AL. Gandhimathi, Adv.

Disposition : Appeal dismissed

Judgement :

K. Raviraja Pandian, J.

1. O.P. No. 226 of 1985 filed for issuance of letters of administration of the Will of the testatrix - Kakkammal has been converted into Testamentary Original Suit and numbered as TOS No. 11 of 1987, as the husband of the testatrix questioned the

genuineness, execution and attestation of the will. The will has been marked as Ex.P.1. The plaintiff Boopathy Ammal since deceased, who was the daughter of the testatrix, was the sole legatee under the will. Plaintiffs 2 to 5 are daughters of the deceased Boopathy Ammal, the legatee under the will. The 5th plaintiff Mallika - one of the daughters of the legatee got married to Balram Reddy, one of the two brothers of Boopathy Ammal, but issueless. The other brother was Booloka Reddy. Both the brothers predeceased Boopathy Ammal. Defendants 2 to 4 are the legal representatives of Booloka Reddy. The first defendant was the husband of the testatrix, who died pending suit. In the suit, Boopathy Ammal was examined on commission as P.W.1. P.W.2 is one of the five attestors of the Will. P.W.3 is the scribe. One Jagannathan, the Village Nattamai was examined as D.W.1 on the side of the defendants. The learned single Judge, after taking into consideration the evidence made available - both oral and documentary, dismissed the testamentary suit on the premise that the testatrix Kakkammal has not affixed her thumb impression on Ex.P.1 in a sound and disposing state of mind; execution and attestation of the will have not been satisfactorily proved; and the sole beneficiary of the will had taken a prominent role in the preparation, execution and attestation of the will; and there were so many suspicious circumstances surrounding the execution and attestation of the document. The correctness of the same is canvassed in this appeal.

2. The judgment of the learned single Judge is questioned on the ground that none of the defendants entered into the box and gave evidence. The mere fact that the testatrix died after four days after the execution of the will, per se, cannot be a reason to conclude that she lost her consciousness and she was mentally imbalanced during the relevant time. The very purpose of execution of the will is to change the line of succession, which has been magnified unduly without considering the cogent evidence given for bringing in such a change in the line of succession. The natural evidence of the parties, who deposed on behalf of the plaintiffs clearly exhibit the intention of the testatrix. Merely because the witnesses were brought from outside the village, it cannot be a reason to eschew or find fault with the evidence of the witnesses. One of the attesting witnesses has been examined and that is enough in law to prove the execution of the will. In support of the contention, several judgment were relied on.

3. The above said contention was countered by the respondent by contending that the witnesses and the scribe are all from other villages. The evidence of P.Ws.1 and 2 are contradictory with each other as to the execution and attestation of the will. There is absolutely no evidence whatsoever to show that on the date of execution of the will, the testatrix was in a sound and disposing state of mind. It is an admitted fact that the testatrix and her husband were living cordially under the same roof. When that being the position, it is highly impossible for an illiterate and rustic village woman to dictate the contents of the Will to bequeath the property in favour of her daughter with sound disposing state of mind. The propounder and her husband have taken an active part in the execution and attestation of the will, which per se exhibited that the will was not written with free will and volition of the testatrix. In support of his contention, the Counsel relied on number of judgments.

4. We heard the argument and perused the materials on record.

5. In the case of present nature, the line of judgments of the Apex Court say in one voice that the onus of proving the Will is on the propounder. In the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court for the court to accept the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. There must be real, germane and valid suspicious features and not fantasy of doubting mind. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence.

6. The legal requirement in terms of Sections 63 of the [Indian Succession Act, 1925](#) and Section 68 of the Indian [Evidence Act, 1872](#) is now well settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and Indian Evidence Act. The testamentary capacity of the propounder must be established. The execution of the Will by the testator has to be proved. Atleast, one attesting witness is required to be examined for the purpose of proving the execution of the Will. However, it is also required to be shown that the Will has been signed by the testator with his free Will and that at the relevant time he was in the sound disposing state of mind and understood the nature and effect of disposition. It is also required to be established that he has signed the Will in the presence of two attesting witnesses, who attested his signature in his presence or in the presence of each other. The deprivation of due share by the natural heirs by itself is not a factor, which would lead to the conclusion that there existed suspicious circumstances. But the background of the facts would tilt to the balance otherwise. When a will is prepared and executed under circumstances which raise the suspicion of the Court, it lies on the propounders not merely to prove the execution of the will, in the sense that it was signed by the testator, but also to adduce evidence which removes such suspicion and to satisfy the Court that the testator knew and approved of the contents of the Will, vide *Sadachi Ammal v. Rajathi Ammal* AIR 1940 Mad 315, *Indu Bala Bose v. Manindra Chandra Bose* : [1982]1SCR1188 , *Guro (Smt) v. Atma Singh* : [1992]2SCR30 , *S. Venkatachala Iyengar v. B.N. Thimmajamma* : AIR 1959 SC443 , *Rani Purnima Devi v. Kumar Khagendra Narayan Dev* : [1962]3SCR195 , *Savithri v. Karthyayani Amma* (2007) 11 SCC 621, *Jaswant Kaur v. Amrit Kaur* : [1977]1SCR925 , *Ramabai Padmakar Patil v. Rukminibai Vishnu Vekhande* : AIR 2003 SC3109 , *P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar* AIR 1955 SC 1852, *Pushpavathi v. Chandraraja Kadamba* : AIR 1972 SC2492 , *Rabindra Nath Mukherjee v. Panchanan Banerjee* : AIR 1995 SC1684 and *Daulat Ram v. Sodha* : (2005)1SCC40 .

7. Having in mind the above settled legal proposition, let us proceed to consider the evidence available on record.

8. On the reading of the evidence of P.Ws1 to 3, we are of the view that their evidence is not supporting each other. There are several suspicious circumstances. The testatrix was ill and taken to a doctor at Madhuranthakam in a car for treatment on 18.1.1985 in the evening. The next day i.e., on 18.1.1985 the Will was executed from 2.30 to 4.00 p.m. She died on 22.1.1985 i.e., within three days. P.W.1 deposed that on 19.1.1985 the Will was sought to be registered, but not registered, as the registering authority directed them to come on some other day, as it was late by 4.30 on that day. If the testatrix was in a sound disposing state of mind, nothing would have prevented the appellant to get the Will registered on the next day or any other subsequent days before her death.

9. As stated in the summation of facts, there were two sons to the testatrix. One of the daughters of the beneficiary - plaintiff got married to one of the two sons of the alleged executrix and the husband was predeceased issueless. Thereby the daughter of the plaintiff is benefited by the Will. However, the other son had died leaving behind three minor children, who were totally excluded from inheriting the property because of the Will. This is also one of the suspicious circumstance, which has not been cleared either by the evidence of P.W.1, P.W.2 or P.W.3. Of course, changing the line of succession per se cannot be reason to vitiate the Will in the absence of any suspicious circumstances. But in this case, there are several suspicious circumstances surrounding the execution, attestation of the Will and as to the sound disposing state of mind of the testatrix. The alleged Will is said to have been executed by five witnesses. All the five witnesses are brought from other and different villages. None of the witnesses were from the same village of the appellant. There is also no acceptable reason given by any of the witnesses supporting the execution of the Will as to why all the attesting witnesses including the scribe are all brought from outside the village of Devanur in which the testatrix and her husband are living. It is the evidence of P.W.1 that the testatrix - Kakkammal sent a particular person to get the attesting witnesses from other villages, but she was not able to say who was that person through whom the attesting witnesses were brought to the place of execution of the Will. So is the evidence of P.W.2 about the person through whom the attesting witnesses were stated to be procured.

10. It is also available in the evidence of P.W.2 that the husband of the testatrix was present at the time of execution of the Will, but no reason, what so ever, has been given as to why he was not asked to sign as attesting witness. Further, it also came out from the evidence of P.Ws.1 and 2 that one Kabirdas Reddiar was also present at the time of execution of the Will. The said Kabirdas Reddiar is none other than the son-in-law of the testatrix. Being a family member, he would have been atleast one among several attesting witnesses. Quite contrary to the evidence of P.W.1 about the availability of her husband Kabirdas Reddiar, P.W.3 - the scribe had spoken that Kabirdas Reddiar was not present. P.W.2 - Venkatesan, who was the sole attesting witness examined, cannot be regarded as an independent witness, as he admitted that he had been assisting P.W.1 in the conduct of the case and P.W.1 - the beneficiary under the Will is the mother-in-law of P.W.2. P.W.1 in her evidence has stated that the Will was written in Cheyyur. But P.W.2 says that the Will was written in Devanur village. Further, it is the evidence of P.W.1 that no one has come from Pachayambakkam for the execution of the Will. But contrary to that, P.W.3 - the scribe is the resident of Pachayambakkam.

11. The Will says that the first defendant - husband of the testatrix was not taking care of the testatrix. But there is no evidence to that effect either from P.W.1 or P.W.2. But it is admitted in evidence of P.Ws 2 and 2 that the testatrix was living with her husband - first defendant till her last breath. Further, it is stated in the Will that the plaintiff - P.W.1 was taking care of the testatrix for the past 20 years. But the evidence of P.W.1 is that she lived with her husband for 1 years after marriage. Thereafter she along with her husband came and settled down and living for more than 20 years along with her father and mother. Thus the entire family of the plaintiff was taken care of by the mother - the testatrix and the father the defendant. Neither the contents of the Will nor the evidence the plaintiff has established that there was some misunderstanding or quarrel between the testatrix and her husband and the first plaintiff - sole beneficiary alone was taking care of the testatrix for a long period of time by spending her own money. On the contrary, here is a case in which admittedly the sole beneficiary was living along with the father and mother for nearly 20 years even after the marriage.

12. The evidence of P.W.2 is also very evasive as to the person who informed him to go to the house of Kakkammal to Devanur village for attesting the Will. Further, it was his evidence that at the time of execution of the Will, the testatrix - Kakkammal and her husband were very much present and they have taken part in the execution of the Will. P.W.2 says that five witnesses attested the Will as directed by Kabirdas Reddiar - the husband of plaintiff No. 1 - the beneficiary. Thus the beneficiary and her husband have taken an active role in the alleged execution and attestation of the Will and this is also one of the unexplained strong suspicious circumstance. It is evident from the available evidence that the beneficiary and her husband took the testatrix - Kakkammal in a car to the Sub-Registrar's Office for getting the Will registered. They have actively taken part in the execution of the alleged Will and its attestation, which suspicion is not cleared with sufficient reasoning.

13. The testatrix was an illiterate lady. She did not know to read and write. It is the evidence of P.Ws.1 and 2 that the testatrix dictated the recitals and the scribe wrote the Will. But in another place, P.W.2 says that Kakkammal gave the particulars and the scribe wrote the format of the Will. In respect of R.C.No. of the tractor, one of the property in the Will, there is discrepancy in the evidence of the witnesses. P.W.2 stated that the registration number of the tractor was not given by Kakkammal. The scribe noted the Registration Number from the vehicle itself. However, P.W.3 - the scribe says that the RC Book of the tractor was given by the grand daughter of Kakkammal and the Registration Number was noted from the R.C.Book. Likewise, in respect of the particulars about the property at T. Nagar also, there are contradicting evidences as to who gave the details of survey number. As per P.W.3, the document was sent through Rajeswari. However, it is the evidence of P.w.1 that these particulars were given by the testatrix herself without referring to any document and no one else.

14. From the evidence of P.W.1, it is clear that she has taken an active part in the execution and attestation of the Will. Being a beneficiary, she has to explain to the satisfaction of the Court for such association, which is totally absent in this case. Regarding the health condition of the testatrix, it was an admitted case that she was having blood pressure and sugar and it is also on evidence that on the night

of the previous day to the execution of the Will i.e., on 18.1.1985, she was taken in a car from Devanur village to Madhurantham to a Doctor. The mental and sound disposing state of mind condition of the testatrix has not been established in the given set of facts. When the Will was attested by more than five persons, all from out of the village of Devanur, though legal requirement is atleast one witness has to be examined, the plaintiff would have examined atleast few more attesters so as to clear out the cloud. Apart from that, no independent witness was examined to prove the execution and attestation of Ex.P.1 Will. Not only the attestation has not been proved but also the animus to attest the Will has not been proved.

15. It is the evidence of P.W.3 that Venkatesan - P.W.2 obtained the signature of attesting witnesses of Ex.P.1 and that he made a request to all the attesting witnesses to attest the Will. It is the further evidence of P.W.3 that Venkatesan held Kakkammal's thumb and impressed it on the stamp pad which was already there and affixed them in Ex.P.1. However, P.W.2 has deposed to the effect that Kakkammal affixed her thumb impression. P.W.2 says that all the five attesting witnesses signed Ex.P.1 Will with their respective pens. However, on a perusal of the Will it is clear that all the signatures including the contents of the Will and the signature of the scribe were all written with one and the same pen. Regarding the time of execution of the Will, P.W.2 says that the Will was executed at 4.00 p.m. P.W.3 says that it was started by 3.30 and completed by 4.30 p.m. P.W.3 says that even the execution was over by 2.30 p.m. The non-examination of the defendants was put forth by the appellant. The first defendant died pending suit. The other defendants are legal representatives. They cannot speak about the execution or otherwise of the alleged Will as they were not aware of the facts. However, the village Nattamai, who is a respectable person in the village, a contemporary of the testatrix and her husband spoken that both the testatrix and her husband intended to give the properties to all their heirs.

16. In the above said background, this Court is not able to accept the case of the plaintiff that an illiterate village woman, who was sick and taken to Doctor during the relevant period has voluntarily and willingly procured the witnesses including the scribe, all from other village and dictated to the scribe with accurate details of the property to write the Will Ex.P.1.

17. With the available material evidence, we are not able to take a different view than the one taken by the learned single Judge. For all these reasons, the appeal is dismissed. However, there is no order as to costs.

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