

Varghese Vs. Mathew Simon

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Court : Kerala

Decided On : Jan-25-2010

Reported in : 2010(1)KLT719

Judge : M.N. Krishnan, J.

Acts : [Succession Act, 1925](#) - Section 63

Appeal No. : M.F.A. Nos. 684 and 698 of 2003

Appellant : Varghese

Respondent : Mathew Simon

Advocate for Def. : Siby Mathew,; Philip J. Vettickattu,; B. Premnath,;

Advocate for Pet/Ap. : N. Subramaniam and; M.S. Narayanan, Adv.

Disposition : Appeal dismissed

Judgement :

M.N. Krishnan, J.

1. M.F.A. No. 684/03 is preferred against the judgment in O.S. No. 1 of 1989 of Additional District Court, Pathanamthitta and the other case is filed against the judgment in O.S. No. 4 of 1988 of Additional District Court, Pathanamthitta. For the purpose of appreciating the case, I shall briefly refer to the facts of the case. Here

the subject matter is regarding the genuineness and acceptability of the Wills. One Aleyamma, according to the case of the defendants had, executed a Will Ext.B2 in the year 1964 and the plaintiff in O.S. No. 1/89 would contend that she had executed a Will on 8.6.1980. It is also contended that the Will of 1964 is not a valid document. Plaintiff in O.S. No. 4/88 would contend that the Will Ext. A4, alleged to have been executed in the year 1980, is a forged document and it will not have any effect. So the decision of the case would depend upon the acceptability of one of these Wills. Original plaintiff in O.S. No. 4/88 is one of the sons of Aleyamma's sister by name Saramma. According to the Will, alleged to be executed in the year 1980, the entire property is to devolve upon the husband of Aleyamma namely K.C. Chacko. On the other hand as per the Will Ext.B2 the immovable property is to devolve upon the two sons of Saramma on the condition that they have to pay certain amounts to Saramma's daughters and there is also a specific clause which reserves the right to K.C. Chacko to enjoy the property without the right to mortgage. Now Ext.B2 in 1964 Will is a registered Will. Ext.A4 is an unregistered Will. I am conscious of the fact that a Will need not be registered. But it may be one of the circumstances to analyse the correctness. Only for that purpose I have mentioned that Ext. A4 Will is not a registered one. Now Ext.A4 Will and Ext.B2 Will were sent for comparison of signature to an expert. The comparison was done by DW.7 Dr. Jayakumar from the Forensic Laboratory at Thiru vananthapuram. The comparison of Ext.A4 was done with admitted signature of Aleyamma Chacko that is in A1 to A3. The admitted signatures were marked in 'S' series and the disputed signature in ExtA.4 was marked in 'Q' series After analysis of the signatures, the Forensic Expert came to the conclusion that 'Hence the result that the writer of standard signatures marked S1 to S3, S1(a) to S1(e), S2(a) to S2(e) and S3(a) to S3(d) did not write the red enclosed questioned signatures marked as Q1, Q1(a), Q1(b) and Q(c).' So the signature contained in Ext.A4 document cannot be said to be that of Aleyamma Chacko. The expert compared the signature in Ext.B2 also with the admitted signatures during period of 1959 to 1962. The expert opinioned the writings are free and natural but materials are not sufficient to hold that it is written by one and the same person. But the expert was clearly of the opinion that, that is a free writing. But so far as Ext.A4 is concerned the expert opinioned that even signs of forgery attempts is there. The classification difference

in writing characters found between questioned and standard signatures mentioned above are beyond range of natural variation or intended disguise. So the categorical clear finding of the expert on the basis of scientific examination is to the effect that the signatures found in Ext.A4 cannot be said to be that of Aleyamma Chacko.

2. Now the learned Counsel for the appellant very strongly contends that when an expert is examined it is expected to be proved that he is really an expert whose evidence can be totally appreciated. In support of such argument the learned Counsel relied on some decision as well including *Sri Balakrishna Das Agarwal v. Smt. Radha Devi and Ors.* : AIR 1989 All. 133. At the outset I may point out the expert in this case is not a private expert. He is an expert appointed by the Government in the Forensic Laboratory of the State Government of Kerala. A reference to the report would reveal that his qualification is M.Sc, PhD., and DDE is specifically designated as Scientific Assistant (Documents Forensic Science Laboratory, Thiruvananthapuram). So just because a suggestion is not put to the witness at the time of chief examination it would not ipso facto invalidate the evidence in this case. It has also to be stated, if there was any doubt regarding the competency of the expert the cross examination counsel should have questioned regarding the correctness of his qualification as well as capacity to compare the signatures in the document. It is also not done. This Forensic Expert is examined as DW7 and he had faced vehement cross examination and he had categorically deposed before the court to the effect that the signature in Ext.A4 could not be said to be that of Aleyamma Chacko which is the signature relied on by the plaintiff in O.S. No. 1/89.

3. Will is a very solemn document. It can never be proved by the person, who executed it for the reason that the Will comes into operation only after the death of the testator. As early as in 1959 the Hon'ble Supreme Court, had given the guidelines to be followed. It is stated by the Apex Court that while attempting to find out genuineness of the Will, the court is sitting in the arm chair of the testator to find out the truth. The propounder of the Will has the paramount responsibility to prove the Will and if there are any suspicious circumstances surrounding the execution of the Will it has to be cleared to the satisfaction of the court so as to act

upon it. Now the doubt created is whether the Will of the year 1980 is true or not. It is to be stated that reading of the Will Ext.A4 and B2 would reveal that in Ext.B2 the disposition is natural and genuine and it can be accepted. Aleyamma Chacko and Chacko did not have any children. Now the Will Ext.B2 would reveal that she wanted to safeguard interest of her husband and that is why she reserved a life interest in favour of Chacko till his death without the right to mortgage the property. When it came to question of vesting she gave priority to the sons of sister and at the same time made a stipulation as to make some payment to their sisters and obtain stamped receipts. But in Ext. A4 the total disposition is in favour of the husband and under the Indian Succession Act when they die without children they are only entitled to get half right of the property. I refer this only for the specific reason that Chacko also executed a Will in the year 1983. Though it deals with the devolution of the property it never states about the nature of acquisition of the property Chacko by himself did not have any right in the property. Only if he succeeds to the property of his wife he will be entitled to execute that will. So the opinion mentioned about Ext.A4 and the Will executed by Chacko could reveal that all is not well. The handwriting expert's evidence coupled with the suspicious circumstances make this Court also to hold that Ext.A4 Will is not genuine and it shall not be accepted. But that does not end the case there. In order to succeed the plaintiff in O.S. No. 4/88 is to establish about Ext.B2 Will. There are only two Wills Ext.A4 and B2. When Ext.A4 Will is unacceptable that will give some credentials to Ext.B2. So far as Ext.B2 is concerned Ext.X9 report does not ipso facto hold that signatures are proved. There are findings to the effect that the admitted signature of Aleyamma Chacko in the other documents along with the disputed signature in Ext.B2 is what a free style of writing and there is not a trace of fraud or forgery in such signatures. It has also to be stated that in a Will a signature need not be proved by examining an expert alone. It can be proved through the attesting witness or scribe. Here is a case where the scribe has preserved the draft of the Will and the attesting witness also had deposed about the genuineness of the Will. It is submitted that Aleyamma Chacko and the witness had seen each other affixing the signature in the Will. Therefore the statutory mandate prescribed under Section 63 of Indian Succession Act are complied with. It is also to be stated that learned District Judge had elaborately considered the

matter in a detailed manner and had analysed the evidence correctly to arrive at a decision that Ext.B2 is genuine and valid and therefore the plaintiff in O.S. No. 4/88 is entitled to succeed and the plaintiff in O.S. No. 1/89 is liable to fail. I do not find any ground to interfere with the decision rendered by the learned Additional District Judge and therefore both the appeals fail and they are dismissed, but under the circumstances without any order as to costs.

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