
(2003) 08 AP CK 0023
In the Andhra Pradesh High Court
Case No : C.M.P. No. 8380 of 2001

Cherukuri Satyavathi (Died) and Another	APPELLANT
Vs	
Velaga Kamala and Others	RESPONDENT

Date of Decision : 09-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 22 Rule 3

Citation : (2003) 08 AP CK 0023

Hon'ble Judges : J. Chelameswar, J;Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : M. Krishna Mohan Rao, for the Appellant; B. Adinarayana Rao, for the Respondent No. 1, Mr. G. Pedda Babu, for the Respondent No. 2 and Mr. M. Chandrasekhara Rao, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Dubagunta Subrahmanyam, J.—This petition is filed under Order 22, Rule 3; Order 1, Rule 9 and Section 151, C.P.C., requesting the Court to implead the second petitioner as the legal representative of the deceased - sole appellant in the appeal.

2. First respondent in this application filed the suit in O.S.No.226 of 1987 for partition of plaint schedule properties into four equal shares by metes and bounds according to good and bad qualities and for separate possession of one such share to her. The suit property was the estate of the husband of the sole appellant and grandfather of respondents 1 and 2 herein. Third respondent was impleaded later in the suit alleging that he is the adopted son of the sole appellant Satyavathi. She denied having adopted the 3rd respondent. The trial Court decreed the suit granting 1/4th share each to the plaintiff and the second defendant and the remaining half share to the first defendant in the suit. Aggrieved by the said preliminary decree for partition, the first defendant in the suit, namely, Satyavathi filed the present appeal. Her so called adopted son is the third respondent in the appeal. During the pendency of the appeal, the sole

appellant Satyavathi died. Thereafter a memo was filed by the third respondent in the appeal stating that as the sole Appellant died and as he is the adopted son of the deceased sole appellant, the appeal abated. The appeal was not dismissed by this Court as abated basing on the memo filed by the third respondent in the appeal. However, N. Sankar Prasad filed the present application to come on record as the second appellant on the ground that the sole appellant bequeathed her entire estate including the suit property to him by virtue of a registered Will on 19.10.1994. The L.R. application is opposed by the third respondent. Thereupon this Court directed the trial Court to make an inquiry into the averments made in C.M.P.No.8380 of 2001, record evidence and submit a finding to this Court. In the inquiry before the trial Court the petitioner examined P. Ws. 1 to 3 and marked Exs.A. 1 to A. 16. Third respondent examined himself as R. W. 1 and marked Exs.B. 1 to B.8. The disputed Will was marked as Ex.A.1. The genuineness of the Will was disputed and questioned by the third respondent. On a consideration of the evidence adduced before him the learned trial Judge held in para 15 of his Order that as per the evidence of the witnesses, the execution of Ex.A. 1 Will is proved. After recording such a categorical finding, the trial Judge opined that the petitioner took a prominent role in the execution of the Will and as the entire property was bequeathed to him, it is a suspicious circumstance. The trial Judge further held that the deceased sole appellant had two sisters and one brother and even though she was having close relations, she did not bequeath any portion of her property to any of them and she bequeathed the entire property to a stranger, namely, the 2nd petitioner. It is to be stated that the third respondent is a son of one of the sisters of sole appellant. Therefore, in the view of the learned trial Judge, active participation by the propounder of the Will, namely, the petitioner and not bequeathing any portion of the property to any of her blood relations are suspicious circumstances and they are not properly explained by the propounder of the Will. He held that Ex.A.1 Will is not a genuine Will. After this Court received the above findings of the trial Judge, objections have been filed by the petitioner alone to the finding given by the trial Judge. The third respondent alone is opposing the claim of the second petitioner to come on record as the legal representative of the deceased sole appellant.

3. It is already noticed that on a consideration of evidence adduced before him, at one place the trial Judge recorded the finding that due execution of Ex.A. 1 Will is proved and at a later stage he held that Ex.A. 1 Will is not a genuine one. The learned counsel for the third respondent relying upon a number of decisions of Apex Court as well as this Court contended that the burden of proving due execution of a Will as well as removing suspicious circumstances surrounding the execution of the Will lie on the propounder of the Will and the burden is heavy on him. There cannot be any dispute regarding the said proposition of law advanced by the learned counsel for the third respondent. In the present case the finding of the trial Court that due execution of the Will Ex.A. 1 was proved is not challenged before this Court.

4. In the present case there is one significant and clinching circumstance to prove that the sole appellant Satyavathi executed the Will Ex.A. 1 in a sound disposing state of mind out of her own free will. In the trial Court (during the course of trial) in the main suit, the sole appellant gave evidence as D. W.3. She was extensively cross-examined by the third respondent. Her deposition (certified copy) is marked as Ex.A.2 in the present enquiry. In her cross-examination third respondent herein elicited certain crucial answers from her regarding the present Will Ex.A. 1. She deposed as follows:

"I executed a Will bequeathing all my properties in favour of Sankara Prasad about 4 or 5 years back. I did not inform my mother-in-law and others about the execution of the Will. It is not true to suggest that the Will was executed by me under the coercion of the said N.Appa Rao".

The said answer categorically indicates that she acknowledges and affirms that she executed Ex.A. 1 Will bequeathing all her properties in favour of the second petitioner herein about 4 or 5 years back. She also denied the suggestion that the said Will was executed by her under coercion of one N.Appa Rao, who happens to be the father of the propounder of the present Will. It is to be stated that it is not the case of any of the respondents in the present application that subsequent to Ex. A. 1 Will the sole appellant executed any other testament and thus the present registered Will the sole appellant executed any other testament and thus the present registered Will Ex.A.1 is not the last testament of the deceased sole appellant. Such a rare and clinching evidence would not generally be available in any other inquiry regarding the genuineness of any Will. Such a question will fall for consideration only after the death of the executant of a Will. However, in the present case, during the life time of the executant of the Will herself the present third respondent, who is disputing the genuineness of the Will, put some crucial questions to her and elicited answers which are highly unfavourable to him and which highly support the version of the propounder of the Will. It is to be stated that the executant of the Will lived for a number of years after she executed and registered the Will Ex.A. 1. She was contesting the suit to the best of her ability and participating in the trial proceedings in the trial Court. The undeniable fact that she spoke about the Will in question indicates that she was well aware of the fact that she executed a testament bequeathing her property and under the Will Ex. A. 1 she bequeathed her entire property to the present second petitioner. She is conscious of the disposition made by her in her Will Ex. A. 1. If for any reason she was forced or coerced to execute the Will Ex. A. 1 on the date of its execution, she was having ample opportunity later for a number of years to execute any other Will or execute any document cancelling the bequeath made by her in favour of the second petitioner herein. As she firmly affirmed the terms of the Will Ex.A.1, even long after she executed the said Will Ex.A.1, unhesitatingly it is to be held that the Will Ex. A. 1 is a true and genuine Will. In view of these circumstances, there is no need to refer to any of the decisions relied upon by the learned counsel for the third respondent. In none of those cases undisputedly there is no evidence similar to that of Ex. A.2,

which is the certified copy of deposition of the sole appellant in the trial Court as D.W.3.

5. However, before parting with the order in question, we would like to refer to only one of the decisions relied upon by the learned counsel for the third respondent. The said decision is reported in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, . We are making reference to this decision to highlight the purpose of placing the onus on the propounder of the Will to remove suspicious circumstances, if any surrounding the execution of any Will. The relevant passage reads as follows:

"There may, however be cases in which the execution of the Will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the Will may appear to be unnatural, improbable or unfair in the light of relevant circumstances, or, the Will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such circumstances 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. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator".

A careful reading of the above passage clearly indicates that object of insistence of removal of such suspicions is for the purpose of removing the legitimate doubt as to the mental capacity of the testator and to remove doubt that the dispositions may not be the result of the testator's free will and mind. If the Court is satisfied that the testator executed the Will out of his free will and mind and he has mental capacity to understand the nature of dispositions made by him in the Will, the presence of so called suspicious circumstances pales into insignificance and they will not tilt the issue against the propounder of the Will. One of the suspicious circumstances pointed out by the trial Court is not bequeathing any portion of her property to any of her blood relations by the testator. In this regard the learned counsel for the petitioner invited the attention of this Court to a passage on a judgment of the Apex Court reported in Sadasivam Vs. K. Doraisamy, which reads as follows:

"Divesting of close relations being the purpose of execution of Will, this is normally not a suspicious circumstance".

In the present case, as already noticed, Ex.A.2 deposition makes it very clear that the testator Satyavathi executed the Will out of her free will and mind and in

a sound disposing state of mind. When the Court is satisfied about the said crucial circumstance, the Court has to record necessarily a finding accepting the genuineness of the Will propounded. For the reasons stated above, this Court holds that the Will Ex.A.1 was executed by the testator Satyavathi out of her own free will and mind and in a sound disposing state of mind and accordingly the second petitioner is to be brought on record as the legal representative of the deceased sole appellant. The question whether third respondent is the adopted son of sole appellant Satyavathi does not fall for determination in this L.R. application .

6. In the result, the petition is allowed. The Registry is directed to implead the second petitioner as the second appellant representing the estate of the deceased sole appellant.