
(2015) 03 KAR CK 0036

In the Karnataka High Court

Case No : Regular First Appeal Nos. 256 and 558 of 2009

Harish Babu and Others

APPELLANT

Vs

Lalitha and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0036

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : M.S. Varadarajan, for the Appellant; S. Mruthyunjaya, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These appeals are heard and considered together having regard to the facts and circumstances of the case.

2. In so far as RFA 538/2009, is concerned, the same having been dismissed for default, applications are filed seeking restoration of the same and for condonation of delay in filing the application for restoration.

For the reasons stated in the affidavits filed in support of the applications, the applications are allowed.

3. The facts giving rise to these appeals are as follows:

The appellant in RFA 256/2009 was defendant No. 1 in O.S. No. 4181/2002 and defendant No. 2 in O.S. No. 2330/1996. The appellant in RFA 538/2009 was the plaintiff in O.S. No. 2330/1996 and defendant No. 2 in O.S. No. 4181/2002.

These two appeals arise out of two suits, one filed by the first respondent who is common in both the appeals, whereby she had sought declaration that she was the absolute owner of the suit property, which was a house premises bearing No. 198/2, Krishnoji Rao Garden, Link Road, Sheshadnpuram, Bangalore and that she had inherited the same under a will left behind by her mother.

The appeal in RFA 538/2009 is filed by the plaintiff in O.S. No. 2330/1996, who was the sister of the plaintiff in O.S. No. 4181/2002, and in the suit, she had sought partition of the suit property, on the footing that her mother had died intestate and the property was inherited by her from her grand father. The suits were clubbed together and decided by a common judgment.

The rights of the parties turned on whether the will set up by the plaintiff in O.S. No. 4181/2002, the first respondent in RFA 256/2009, was proved, which was held in favour of the said plaintiff. Therefore, if the same is sustained, the appeals would have to be dismissed and if it is found otherwise, the appeals would have to be allowed, in which event, the exclusive claim of the plaintiff in OS 4181/2002 as against her sisters and brother would be set at naught and they would all inherit the property equally.

In so far as the will is concerned, it is said to have been executed by the mother of the parties, as on 27.8.1992, when the testatrix was said to be aged about 68 years. The will runs into 11 typed pages and is in the English language. It is duly registered before the Sub-Registrar, Gandhinagar and duly attested by three witnesses, namely, V. Ramachandra Rao, T.V. Radhakrishna and T. Ramakrishna. In proof of the will, the attesting witnesses, namely, T.V. Radhakrishna and T. Ramakrishna have been examined.

4. The learned Counsel for the appellant in RFA 256/2009 Shri M.S. Varadarajan would focus his contentions on the genuineness of the will. In this regard, he would highlight the following circumstances:

That the will runs into minute details and all of which is in English and drafted in a manner, which clearly indicates that it was drafted by a trained legal mind, and not by a lay person, as sought to be claimed. In other words, it is sought to be established that one of the attesting witnesses namely, V. Ramachandra Rao, had translated the intention as narrated by the testatrix in the Kannada language into English language and had directly dictated the same to a typist, who had prepared the will in the office of the Sub-Registrar. In this regard, the said attesting witness, who had dictated the will has not been examined as a witness. On the other hand, it is T.V. Radhakrishna and T. Ramakrishna, who were said to be the colleagues of the beneficiary Smt. Lalitha, the eldest daughter of the testatrix, who have tendered evidence in this regard and there is inconsistency in their statements as to the sequence of events relating to the preparation of the will, the execution of the same and the due registration of the said will. In that, it is stated by D.W. 2 T.V. Radhakrishna that all the parties namely, the testatrix and the three attesting witnesses had all met at the residence of the testatrix and from there, they had proceeded to the Sub-Registrar's office. It is pointed out that in so far as the witnesses and the testatrix converging at the Sub-Registrar's Office, it was stated by T.V. Radhakrishna that he was informed that the will would be registered at the Sub-Registrar's office in Gandhinagar and he had proceeded there directly from his home and he had met the testatrix and other attesting witnesses there. However, T. Ramakrishna in his evidence has

stated that himself, T.V. Radhakrishna and Ramachandra Rao had met the testatrix at her home and from there, they had proceeded to the Sub-Registrar's office. This is an inconsistency which is not explained.

It is pointed out that the very bequest made in favour of Lalitha is unconscionable. In that she was educated and she was a B.Com. graduate and was employed in a private company and later in a bank. Though the testatrix has stated that her husband had died in the year 1971 and Lalitha was 18 at that point of time, and she had joined a private company as soon as her father died and it was she who had supported the family throughout and educated the other children and even got them married at different points of time and since she was estranged from her husband and she had come to live along with the testatrix throughout, therefore, she was bequeathing the property entirely to Lalitha and was not bequeathing anything to other children, is not readily acceptable.

It is sought to be pointed out that Harish Babu, the son, was employed as an auto rickshaw driver and was barely educated, he had studied up to 7th standard. Whereas Bharathi, one of the other daughters had studied up to SSLC and Chandrakala, yet another daughter, had studied up to the 9th Standard. It is inconsistently stated that she was never educated whereas in another place in the record, it is stated that she had studied up to 9th standard. Therefore, it would be evident that hardly any education was provided to the other children of the testatrix, which could be claimed as being out of her income derived through her earnings. They were all living with very humble means and therefore, to exclude the said children and to confer the exclusive benefit in respect of the property in favour of Lalitha, was not justified nor reasonable and therefore, it leads to a presumption that the will was a got up document by Lalitha with the assistance of her erstwhile colleagues namely, the two attesting witnesses, T. Ramakrishna and T.V. Radhakrishna.

It is also pointed out that Parvathi Bai was not a literate person and though she has signed on each page of the will, the halting manner in which she has affixed her signature it self would indicate that she was not comfortable even with affixing her signature. And the fact that at the foot of the will, on the last page, it is endorsed as follows by hand "Dictated by myself to the typist" and Parvathi Bai had affixed her signature thereto, which is also confusing, as it is not evident that she was conversant with the English language and she could not have dictated the matter directly to the typist. Though inconsistent evidence as to V. Ramachandra Rao being the person who had drafted the will at the instance of Parvathi Bai, who had stated her intention in the Kannada language and it was formally translated into English, as reproduced, is a statement, which is not established. In that, it is nowhere indicated in the will that it was V. Ramachandra Rao, who had translated the words of Parvathi Bai into English and thereafter, it was read over to her and she understood the contents of the will before affixing her signature. This is not evident from the will.

It is further pointed out that in so far as the attestation of the will is concerned,

there is again inconsistency as to whether there was proper attestation as required in law. The attesting witnesses would declare that they were present when the testatrix affixed her signature and at her request, had subscribed their signatures to the will, as attesting witnesses. Going by the statements made by T.V. Radhakrishna D.W. 2, who had stated inconsistently that the testatrix had first affixed her signature to the will and thereafter V. Ramachandra Rao had affixed his signature, is again contradicted by stating that when he signed the will, the endorsement to the effect that "Dictated by myself to the typist", was already made and was duly signed by Parvathi Bai, who is said to have been present even before he came there and he did not know who had made that endorsement. This statement cannot be reconciled with his earlier statement that he had seen Parvathi Bai affix her signature, but he had not seen her endorse the statement that the will was dictated by herself.

It is also admitted by the witnesses that the will was never read out and explained to Parvathi Bai and it was the belief of the witnesses that she was conversant with the English language, as one of them had seen her read English newspapers. This is the only statement made as to the familiarity of Parvathi Bai with the English Language. It is not evident that she was indeed an educated person and could also read and write the English language. Most importantly, since the very controversy is as to the manner in which the will was prepared and whether Parvathi Bai was made aware of the contents of the will before she affixed her signature, it was necessary for the plaintiff, respondent No. 1 in RFA 538/2009, to have examined V. Ramachandra Rao, who is said to be the author of the English version of the intention of the testatrix, which is set down in the document and V. Ramachandra Rao never having been examined as a witness, the inconsistencies as to the execution and attestation of the will remain unexplained and cannot be reconciled.

Therefore, the manner in which the document is said to have been prepared and the contents thereof, whereby the other children of Parvathi Bai are excluded to the property, would raise a serious suspicion of the genuineness and veracity of the will.

It is also pointed out that Parvathi Bai was seriously ill during the year 1994 and at that point Harish Babu, the son of the testatrix had come and lived along with her and was looking after her towards the end of her life. However, there is no material produced in this regard and during his stay along with her, since there was paucity of accommodation, he had even put up construction in a portion of the suit schedule property and he was residing there. If the testatrix had intended to exclude other children apart from Lalitha, the permission granted to Harish Babu to put up construction would not have been given. It is also not in dispute that the other daughter Chandrakala was residing in another portion of the suit property.

The learned Counsel would also point out that it is also stated in the will that the testatrix had inherited the property under a will executed by her father dated

10.1.1969 and duly registered before the Sub-Registrar, Gandhinagar, Bengaluru and significantly, that document has never been produced in the course of the proceedings and hence it is doubtful whether any such document existed.

The learned Counsel-would submit that it is settled law that mere proving of the will in terms of Section 68 of the Evidence Act, 1882, by itself would not be sufficient and if there are suspicious circumstances surrounding the will it would be necessary for the propounder to remove all such suspicions before the court, in holding that the will has been proved in accordance with law. In the present case on hand, the trial court has merely found that the will was duly executed by the testatrix and it was attested by three witnesses, though the law requires only two attesting witnesses and it was duly registered and has proceeded to assume that there was no suspicious circumstance surrounding the will and has also accepted the explanation of the testatrix purportedly stated in the will that since Lalitha had from inception taken care of the family and had looked after the welfare of all, the testatrix in her will having stated that she was conferring the entire benefit on Lalitha and has ignored the circumstance that the other children were not well provided for and were living in humble circumstances. Therefore, whether such disinheritance of the other children, who possibly deserved the property more, whether would not shock the conscience, is a question, which ought to have been answered by the trial court. And hence, the learned counsel would place much emphasis on the circumstances, to demonstrate that there was no proper explanation forthcoming for the exclusion of the other children of Parvathi Bai, in the entire benefit being conferred on Lalitha, under the terms of the will. In this regard, the learned Counsel would submit that there are a catena of decisions which have laid down that though there is no hard and fast rule as to the manner in which suspicious circumstances could arise and how they are to be considered, in the present case on hand, the admitted circumstances itself would raise a suspicion as to the due execution and attestation of the will and whether the testatrix was fully aware of the contents of the will and even if it could be presumed that she has affixed her signature to the document and it has been duly registered and her identity also has been endorsed by the Sub-Registrar, it would not result in the will being proved in accordance with law, unless the suspicious circumstances are removed. And in this regard, the learned Counsel would submit that the court below has glossed over the several suspicious circumstances that were raised and has therefore erred in law in holding that the plaintiff, respondent No. 1 in appeal in RFA 538/2009, had established her case to the exclusive ownership of the suit property in terms of the will and seeks that the appeal be allowed and the suit be dismissed.

5. The learned Counsel Shri Ganesh Shenoy, appearing for the appellant in RFA 538/2009, would submit that if the will is set at naught, it would follow that the property will be available for partition as between the parties and they would all equally share the property in accordance with law and hence would support the contentions put forth by Shri Varadarajan.

6. On the other hand, learned Counsel Shri Mruthyunjaya, appearing for respondent No. 1 in both these appeals, would seek to justify the judgment of the court below and would also seek to provide explanations to the inconsistencies that are thrown up. While contending that he cannot improve upon the judgment of the trial court nor could urge contentions outside the record, but would leave it to this court to arrive at a decision as to whether there are really any suspicious circumstances, which would arise in the case on hand, when it is not in dispute that the will was duly executed and registered, as found by the court below.

7. The law requires that a will is to be proved with reference to the special rule of evidence pertaining to documents which require attestation and though documents which are registered would not require the examination of such attesting witnesses in proof thereof, except a will. Therefore, even if a will is registered, the attesting witnesses would necessarily require to be examined before the Court in proving the will. However, that by itself would not suffice to satisfy the requirement of proving the will, as rightly pointed out by the learned counsel Shri M.S. Varadarajan. If there are suspicious circumstances that surround the will and the same are shown to be material in deciding the rights of the parties, it would then be necessary for the propounder of a will to firstly dispel those suspicious circumstances before the Court can hold that the will has been proved, in accordance with law. Hence, insofar as the first requirement of attestation and the examination of attesting witnesses, is certainly satisfied in the present case on hand. But, that by itself would not be sufficient in establishing that the will was genuine. It would be necessary to indicate that there was absolutely no suspicion. In the case on hand, it is not established beyond doubt that Parvathi Bai the Testatrix was conversant with the English language. Hence, it was very much necessary to establish that she knew the contents of the will and she knew that the document being executed was a will and that she also was aware of the contents of the will. Insofar as the Attesting witnesses who are examined having clearly stated that it was Ramachandra Rao, the third attesting witness who was instrumental in drafting the will in English language, as narrated by Parvathi Bai in the Kannada language, he was a witness who was best qualified to state the circumstances under which the will was drafted by him. Unfortunately, he has not been examined as a witness. This is a circumstance which certainly was required to be explained by the plaintiff, in which regard she has completely failed. Therefore, the very execution of the will and whether the Testatrix understood the contents and the nature of the document that she was executing, is not established. Hence, the mere execution and attestation of the document by itself cannot be said to have proved the genuineness of the will. This is especially so in the circumstance that Parvathi Bai had four children of whom it cannot be said that all of them were well educated and well provided for. They were barely educated and were living in humble circumstances. Whereas, the beneficiary Lalitha was a graduate and she was employed in a private company and later in a Co-operative Bank. Therefore, it is

to be presumed that she was in relatively comfortable circumstances. Therefore, for Parvathi Bai to have conferred the entire benefit on Lalitha and to have excluded her other children who were possibly in more need of the property, is yet another circumstance which certainly, though it may not shock the conscience of the court, is a suspicion which certainly lingers. The inconsistency insofar as the manner in which the document was executed and the sequence of events, are not explained and would raise a serious doubt as to whether there was proper attestation of the document as required in law. When one of the attesting witnesses would state that the document had already been signed by the testatrix before he affixed his signature, there is no explanation as to the endorsement duly signed by Parvathi Bai to the effect that she had dictated the document to the Typist, when it was not on record that she was conversant in the English language and in the face of the circumstances that both the witnesses claimed that it was Ramachandra Rao who had dictated the will to the Typist, this inconsistency is again a glaring circumstance which is not reconciled with the actual state of affairs. The further circumstance that the attesting witnesses are the erstwhile colleagues of Lalitha and that it was Parvathi Bai who had sought their assistance in executing her will, would be yet another circumstance when Lalitha claims that she had no role to play in the preparation, the execution and registration of the will. In other words, Lalitha in her evidence has stated that she was totally unaware of the will and it is only several months after the death of her mother that the execution of the will came to her knowledge. This would not explain as to how her colleagues could have acted as the attesting witnesses, if not for her intervention. This is yet another circumstance which is sought to be explained by the counsel for the Respondent No. 1 to claim that the attesting witnesses have in their evidence, stated that they were occasionally visiting the house of the testatrix and therefore, she was familiar with them and she had called upon them to act as attesting witnesses.

This explanation cannot be readily accepted, as the relationship between the first respondent and these attesting witnesses would lead to a suspicion that the will had been engineered by her along with their help. Therefore, for all these reasons, it can be said that the real intention of the testatrix in having executed the will and having got the same registered is doubtful and hence, this Court would not accept that the will has been proved, in accordance with law, notwithstanding that the requirement of law as spelt out in Section 68 may have been duly complied with.

Accordingly, both the appeals are allowed and the judgment and decree in O.S. No. 4181/2002 is set-aside. The suit is dismissed. Consequently, the suit in O.S. No. 2330/1996 is allowed and the suit is decreed as prayed for. A Preliminary decree shall be drawn up in terms of the same.