
(2011) 01 MAD CK 0257

In the Madras High Court

Case No : Writ Petition (MD) No. 11093 of 2008 and S.A. No. 182 of 2005

K.G.K. Ganesamoorthy

APPELLANT

Vs

The Joint Director of School Education, Elementary
Education, The District Elementary Educational Officer, The
Assistant Elementary Educational Officer and K.G.
Sankaranarayanan
R. Krishnammal and Others Vs K.G.
Kantha Kumar (Died) and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0257

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Gnanagurunathan, in W.P. MD No. 11093 of 2008 and Sarvabhauman, Associates in S.A. No. 182 of 2005, for the Appellant; S.C. Herold Singh, Government Advocate R1 to R3, T. Jeen Joseph and S. Sivakumar, R4 in W.P. (MD) No. 11093 of 2008 T.R. Rajagopal, S.C. N. Krishnaveni, for R2, S.C. Herold Singh, G.A. R4 to R7 and M. Gnanagurunathan, R8 to R13 in S.A. No. 182 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The Writ Petition and Second Appeal were grouped together on being specially ordered by the Administrative Judge and posted before this

Court.

3. The writ petition was filed by K.G.K. Ganesa Moorthy, 10th Respondent in the Second Appeal and the son of the first Defendant in the suit in

O.S. No. 177 of 1998. The writ petition was filed challenging the order of the District Elementary Educational Officer, Tirunelveli, dated

20.11.2008, wherein and by which, it was informed that the writ Petitioner and.

Sankaranarayanan, who is the impleaded 4th Respondent were directed to submit certain documents for having the right of management over the Ganesamoorthy Middle School, Kurichi, Palayamkottai Circle.

4. It was found that Ganesa Moorthy Pillai, the former Manager had left a Will dated 17.02.1995, in which he had made his son K.G.

Kanthakumar to be the owner of the school. In a subsequent Will, dated 28.02.1995, he had stated that both movable and immovable properties

will go to his two male heirs in equal parts. On 19.10.1996, a document was registered at Parasalai, (which is a settlement) by which it was found

that the school building will be enjoyed absolutely by Kanthakumar. Since in the second Will dated 28.02.1995, it was stated that both the

movable and immovable properties were to be inherited by both the sons in equal shares, without any order of the Civil Court, the right of the

Management of the School cannot be considered by the Department and both the legal heirs were directed to approach the appropriate Civil

Court for getting appropriate relief. Challenging the said order, the writ petition came to be filed.

5. After filing of the writ petition, an application was taken out to implead K.G. Sankaranarayanan as fourth Respondent and was impleaded by an

order dated 10.12.2008. Private notices were ordered to the fourth Respondent on 05.01.2009 and he is represented by counsel.

6. The second Respondent, District Elementary Educational Officer had filed a counter affidavit dated Nil (2009). Even while the writ petition

was pending, parties were locked up in a civil litigation before the 2nd Additional Sub-Court Tirunelveli in O.S. No. 177 of 1998, which was

decree on 25.03.2004 and against which an appeal was filed before the Appellate Court in A.S. No. 77 of 2004. The appeal was allowed by a

judgment and decree dated 08.12.2004 and the order of the Trial Court was set aside. It was against the said judgment and decree, the original

Plaintiffs preferred the Second appeal in S.A. No. 182 of 2005. Both sides agreed that the disposal of the Second Appeal will decide the destiny

of the Writ Petition.

7. The facts leading to the Second Appeal are as follows:

Late K. Ganesamoorthy was the Manager as well as the owner of the Ganesamoorthy Middle School in Kurichi in Palayamkottai circle. In 1995,

he transferred the management of the school in favour of K.G. Kanthakumar. He also executed two Wills, one dated 17.02.1995 and the other

Will dated 28.02.1995. Subsequently, he executed a Registered Settlement Deed on 19.10.1996, settling the school buildings in favored

Kanthakumar. As per the first Will dated 17.02.1995, he bequeathed the right of Management of the school and a part of the school building in

favored Kanthakumar, his first son. He also provided a dwelling house and a part of the building of the school to his second son Sankara

Narayanan. By the second Will dated 28.02.1995, he bequeathed all his properties including the school, both movable and immovable in favour of

his two sons M/s. K.G. Kanthakumar and K.G. Sankaranarayanan in equal moiety. Thereafter, he executed a registered Settlement Deed dated

19.10.1996 settling the school buildings in favour of his son Kanthakumar. In the Wills, he did not provide anything either to his wife or to his

female children. Late Ganesamoorthy had two wives. His first wife pre-deceased him and through her, he had two sons M/s. K.G. Kanthakumar

and. Sankaranarayanan and a daughter by name K.G. Alagarammal. He married one R. Krishnammal, as his second wife after the passing away

of his first wife and through her, he had four daughters M/s. Kothainayagi, Balamaheswari, Suriya Kala and Gajagowri. On the death of late

Ganesamoorthy, his second wife and children filed a suit in O.S. No. 177 of 1998 on the file of Second Additional Sub Court, Tirunelveli, seeking

a declaration and permanent injunction in respect of the suit properties and also claiming 21/40 shares in the second schedule of the property. In

the suit, the Defendants were the children of the first wife i.e. K.G. Kanthakumar and. Sivasankaranarayanan and Alagarammal.

8. In the suit O.S. No. 177 of 1998, 11 documents were filed by the Plaintiffs and they were marked Exs.A1 to A11. On the side of the

Defendants, 26 documents were filed and marked as Exs.B1 to B26. On behalf of the Plaintiffs, his first wife Krishnammal was examined as P.W.1

and two other witnesses M/s. Balagurusamy and Muthukumarasamy were examined as P.W.2 and P.W.3. On the side of the Defendants, the first

Defendant, Kanthakumar examined himself as D.W.1. Apart from that, four other witnesses M/s. Abdul Ajeez, Balamurugan, Beer Mohammed

and Pandian were examined as D.W.2 to D.W.5.

9. The Trial Court framed the following 8 issues:

- i) Whether the first schedule property is a joint family property?
- ii) Whether the Will dated 28.02.1995 executed by late Ganesamoorthy was legally valid?
- iii) Whether in respect of the first schedule property, the Plaintiffs as well as Defendants 1 to 3 are the agency of the said property?
- iv) Whether it is correct that Defendants 1 to 3 alone are the agencies of the first scheduled property?
- v) whether the Defendants 1 to 3 and the Plaintiffs are entitled to have a right to have rotational management over the school?.
- vi) In respect of the second schedule property, whether the Plaintiffs are entitled to get 21/40 shares?.
- vii) In respect of the first schedule property, whether it is correct to state that 4 and 5th Defendants were responsible for mismanagement?
- viii) whether the Plaintiffs are entitled for any relief?

10. The Trial Court found that the school was started by one Kandasamy Pillai. There was no proof that he in his personal earnings started the

school and since Defendants K.G. Kanthakumar and. Sankararanarayanan were born to Ganesamoorthy, the first schedule property should be

considered as a joint family property. Thereafter, the Trial Court considered the legal effect of the Will dated 28.02.1995, marked as Ex.B1. The

Trial Court found that late Ganesamoorthy executed the first Will and thereafter, without reference to that Will, he executed a second Will and

within a short period, the necessity to write the second Will was not explained. In the Will dated 28.02.1995, there was no reference to the

Management of the School and it was claimed that after 17.05.1995, since K.G. Kanthakumar, was the School Secretary and Manager as per

Ex.B6, the necessity to create subsequent document was not explained. It was found that Ganesamoorthy's physical condition was impaired and

he was undergoing medical treatment. Subsequently, as per Ex.B21, he created a Settlement Deed registered at Parasalai (Kerala State). Even

though there was a reference to third item in the schedule, it was not visited by any one of them and therefore, the first Plaintiff cannot have any

right over the property in Door No. 44 and Door No. 43A. It also found that Ex.B21 was void document and in respect of Ex.B3 and Ex.B1, the

first Defendant in order to deny the right of others had utilised his relationship with late Ganesamoorthy and created those documents.

11. There was also difference in the signatures of P.W.3, Muthukumarsamy and D.W.2, Abdul Ajeez in the Will dated 28.02.1995. Even

assuming that the Settlement Deed in Ex.B21 is accepted as true wherein it was stated that two sons alone are entitled for share, it creates a doubt

on the existence of Ex.B1Will dated 28.02.1995 since it was found that Ganesamoorthy's physical and mental condition were not proper, those

documents were created and hence in order to deny the right of Plaintiffs, the Defendants have made use of Ganesamoorthy and when his mental

condition was not good, these documents were created and therefore, Ex.B1 is not legally valid. With reference to the second schedule property,

the finding was that it was a joint family property and since its an ancestral property, the Plaintiffs are entitled for 21/40 shares. In respect of the

second schedule, first and second items are concerned, 5/8 shares will go to the Plaintiffs. With reference to the 5th issue relating to the

Management of the School, it found that the Plaintiffs are also entitled for a share in the Management of the school and therefore, the Management

must be done on a rotational basis. For the first two years, the Plaintiffs will manage the school and thereafter, for the subsequent two years, the

Defendants will manage the school and the official Respondents must implement the rotational management.

12. As against the judgment and decree dated 25.03.2004, the Defendants filed an appeal in A.S. No. 77 of 2004 and the matter was tried by the

I Additional District Judge, Tirunelveli. The Appellate Court held that for the period from 1980 to 1996, Ganesamoorthy's Physical and mental

condition was proper and therefore, both the Wills were written by him. At the time writing of the Wills he was in good mental and condition. The

settlement deed in Ex.B21 was legally valid. The Lower Appellate Court also held that in a proper mental and physical condition late

Ganesamoorthy left the properties to be shared between the two male sons and he had not provided any share for the daughter or for his wife. The

Settlement Deed came into force after the two Wills came into existence and Ganesamoorthy was holding several posts and he had also

participated in the marriage of the Plaintiffs and the Defendants. He was working in the Civil Supplies Department and thereafter, as Headmaster

and Correspondent of the School. He had his own income and Ganesamoorthy had every right to create encumbrance in the property.

Ganesamoorthy transferred the Management of the school to his first son. The amounts for the marriage written in Ex.B19 and photo as well as

negatives of the marriage conducted for K.G. Sivasankaranarayan showed Ganesamoorthy in good condition. The judgment of the Trial Court was

not legal and therefore, the judgment of the Trial Court was set aside by a judgment and decree dated 08.12.2004.

13. In the second appeal filed by the original Plaintiffs, it was contended that the order of the lower appellate Court was not valid. Late

Ganesamoorthy had no right to bequeath the entire school property in favour of his first son. Exs.B1 and B3 were not proved and the

Ganesamoorthy was not in sound mental condition and the evidence of P.W.2 was not appreciated by the lower appellate Court regarding the

mental condition of Ganesamoorthy. It was also proved that Ganesamoorthy was taking treatment from 1993 to 1996 which was admitted by the

first Defendant and during which period Exs.A10, A11 and Ex.B2 came into existence. Since in the second Will, there was no reference to the

previous Will and there was no reference about the school management, EX.B21 Settlement Deed registered at Parasalai was not valid. Since

P.W.3 had not seen late Ganesamoorthy affixing the signature and also spoken about the state of mind, the Will cannot be relied upon. Since no

property were allotted to the heirs of the second wife, the will was invalid.

14. The question of law framed by this Court at the time of admission on 01.03.2005 was whether the first appellate Court was justified in not

discussing all the issues which were discussed by the Trial Court?

15. Mr. Gnanagurunathan, learned Counsel appearing for the Appellants submitted that Ganesamoorthy's first son K.G. Kanthakumar was

working as Middle School teacher and was also helping his father to run the school and therefore, he alone will run the school. He also referred to

his second son K.G. Sankaranarayanan, who was already employed in higher secondary school and gave the second schedule property to him. In

the second Will dated 28.02.1995 he had very clearly stated that one son and other daughter had already died and that he had made arrangement

for getting married the daughters of his second wife. He had earned the entire

property on his own personal income as he was working as Firka

Supply Officer and later worked as Headmaster of the School. With reference to the marriage of Gajagowri, he made his two sons to be

responsible to get her married and the second wife will stay with the children of the first wife for her life time and in case she does not want to live

them, and she is also entitled to live in-House No. 43 and get the family pension. The learned Counsel after taking this Court to various evidences

also placed reliance upon certain judgments of this Court and the Supreme Court in support of his contentions.

16.1. The learned Counsel for the Appellant relied upon judgment of this Court in *Sadachi Ammal v. Rajathi Ammal* A.I.R.1940 Mad 315 for the

purpose of contending that the registration is not a proof of testamentary capacity and the Will have to be proved before the Court. While proving

the execution of the Will, the testator's capacity and mind also will be a relevant factor.

16.2. The learned Counsel also relied upon a judgment of the Supreme Court in *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, for

the purpose of contending that the proof of the signature of the deceased will show that he is presumed to have known the provisions of the

instrument he had signed. But the said presumption is liable to be rebutted by proof of suspicious circumstances.

16.3. Thereafter, reliance was placed upon the judgment of the Supreme Court in *Rani Purnima Devi and Another Vs. Kumar Khagendra*

Narayan Dev and Another, , wherein the Court found that the propounder of the Will getting sole benefit subject to the maintenance of the

testator's wife and sister and he himself taking part in the execution of the Will and with the signature of the testator not appearing to be his usual

signature through suspicion and in such circumstances, the fact of registration cannot be a sufficient proof. It is for the propounder to dispel the

suspicious circumstances.

16.4. The learned Counsel also relied upon the judgment of this Court in *S. Ramamurthy v. Jayalakshmiammal* 1991 1.L.W. 391 wherein, this

Court held that execution of a document is not mere signing of it.

16.5. The learned Counsel further placed reliance upon the judgment of this Court in *Dharman and Others Vs. Marimuthu*, , wherein this Court held

that in undue influence and unnatural and unconscionable disposition of the entire properties by gift to person having dominating position the initial

burden is discharged by proving dominating position. The Court can also go into the health condition of the donor and total exclusion of daughters

and minor children of the donor without mentioning any reason or misunderstanding can be held to be a suspicious circumstances.

16.6. The learned Counsel also placed reliance upon the judgment of this Court in T. Kanniah Rao Vs. Inder Rao, to the effect that onus of proof

is on the propounder to explain the suspicious circumstances by adducing unimpeachable evidence regarding genuineness and authenticity of Will.

16.7. The learned Counsel further placed reliance upon a judgment of this Court in Rajammal and 3 others Vs. Ramasami and 3 others, wherein

this Court held that the burden of proof is open to the propounder of the Will to prove the doubts in execution of the Will. For the very same

purpose, the judgment of the Supreme Court in Gurdial Kaur and others Vs. Kartar Kaur and Others, was relied upon and in that case, it was

found if some of the natural heirs are disinherited in the Will without any reason, the genuineness can be doubted.

16.8. The learned Counsel further relied upon judgment of this Court in Sivasamy, Manickam and Karuppan Vs. Poomalai, Lakshmi and

Thirupathi, once again for the very same purpose for contending that it is for the propounder of the Will to remove grounds of suspicion.

16.9. The learned Counsel also placed reliance upon the judgment of the Supreme Court in K. Laxmanan v. Thekkayil Padmini and Ors. 2009) 4

MLJ 681 (SC and Bharpur Singh and Ors. v. Shamsheer Singh (2009) 5 MLJ 1605 (SC) to reiterate the same contentions.

16.10. He also relied upon the judgment of this Court in P.R. Vijayarangam v. P.R. Ramanujam 2009 (3) CTC 503 to contend that if the testator

had a falling health profile and the propounder playing predominant role will contribute serious doubts about the execution of the Will.

16.11 Lastly, he relied upon a Division Bench judgment of this Court in Premavathi and Ors. v. Sundararajan and Ors. 2009 (3) CTC 801 for

contending that propounder should remove all suspicious circumstances and must prove the Will.

17. Therefore, he contended that executing two wills within a short time and excluding the heirs of the second wife from any inheritance and

registering a Settlement in a far away place in Kerala as well as the medical evidence produced will show he was under treatment and that the late

Ganesamoorthy never had a disposing state of mind. He also contended that the Trial Court had appreciated all the evidence and found the

documents in Exs.B1 and B3 were not valid and Ex.B21 was unreliable.

18. Mr. T.R. Rajagopal, learned Senior Counsel after taking this Court to the evidence adduced before the Trial Court contended that the Doctor

who was examined as P.W.2., Balagurusamy in his cross-examination had stated that Ganesamoorthy came to him during 1993 and thereafter in

1996. He was not aware of the post held by him during the said period. He could not deny that he was receiving pension and was not aware of his

signature. During the relevant period, he was instrumental in performing marriage for one son and one daughter and was receiving guests during the

marriage ceremony as could be seen from the video picture. Even in his chief examination, he had stated that on 01.01.1993, 02.10.1993 and

23.11.1993, he was only taking treatment as an outpatient and even in October 1996 he was only treated as out patient. Therefore, mental state of

mind of a person cannot be proved by this scanty evidence of P.W.1 who was only working as part time in the hospital and who had seen him

occasionally and also did not produce any medical records about the treatment.

19. On the other hand, during the relevant period, the late Ganesamoorthy was in good physical Sundararajan and Ors. (2009 (3) CTC 801) for

contending that propounder should remove all suspicious circumstances and must prove the Will. condition and was also holding the post of

School Correspondent. The fact he chose the first son to run the school was that he was already a teacher in the School and was helping him in the

Management of the school. It is not as if he did not take care of the other children. In the second Will, he had made a description of all the other

children, which will clearly show his disposition of mind. The Will was proved in the manner known to law which fact was found accepted by the

lower appellate court. He also submitted that Ex.B5 was a legal notice sent by Plaintiffs 4 and 5. Thereafter, the said Ganesamoorthy had

functioned in the school and the other documents like sending form for Urban land tax Ex.B11. Ex.B13 series were 7 post cards written by

Ganesamoorthy in his own handwriting. The only book maintained by

Ganesamoorthy is Ex.B18 and the marriage account for the second Plaintiff in Ex.B19 clearly showed that he was having a good physical state of mind. The photos and negatives found in Ex.B20 series will show that

Ganesamoorthy was receiving guests in the marriage function. These facts were simply ignored by the Trial Court but were found to be valid

documents in assessing the mental and physical health of Ganesamoorthy and further it is not as if the lower appellate court did not appreciate the

evidence on record. On the other hand, it did not discuss all the material facts and came to the conclusion.

20. In the second appeal, only when there was a question of law involved the findings recorded by the lower appellate court can be interfered with.

Evidence recorded clearly shows that Exs.B1 and B3 as well as Ex.B21 cannot be held to be invalid documents or mutually contradictory

documents. Since Ganesamoorthy's first son was already in the school and helping his father to manage the school, it is natural that the father had

given an opportunity to him to continue the administration of the school. His second son was already employed in some other school and therefore

he gave exclusive right to his first son. In the second Will, he had also mentioned about the other daughters of his second wife as well as the

children of his first wife and made reference to each one of them and expressed clearly that he had not provided anything for them. Therefore, it is

not as if the testator was not aware of the other children or their standing in the Society. Even about his own second wife, he had given her right of

residence and the family pension to take care of herself. About the last daughter of the second wife, he had mandated both the sons to be

responsible for getting her married. Therefore, it cannot be said that the Will came into existence in suspicious circumstances that it should be

discarded by the Court at the instance of the Plaintiffs. The propounder of the Will had discharged their obligation in proving the Will and the minor

discrepancies cannot invalidate the existence of those documents. The findings recorded by the lower appellate Court do no call for any

interference.

21. Under the circumstances, this Court has no hesitation in dismissing the second appeal in S.A. No. 182 of 2005 and confirming the judgment

and decree of the lower appellate court in A.S. No. 77 of 2004 on the file of the

first additional District Court, Tirunelveli dated 08.12.2004.

However, the parties are allowed to bear their own costs.

22. In view of the dismissal of the second appeal, the writ petition filed by the Petitioner will have to be allowed and the impugned order stands set

aside. As far as the management of the School is concerned, the right to manage the school will devolve upon the legal heirs of K.G. Kanthakumar

as per the judgment and decree passed by the lower appellate court in A.s. No. 77 of 2004 dated 08.12.2004. No costs. Consequently,

connected miscellaneous petitions are closed.