

(2007) 04 MAD CK 0005
In the Madras High Court
Case No : T.O.S. No. 36 of 2002

R. Palani Kumaraswamy

APPELLANT

Vs

A. Ramachandra Shastri and Mrs. Usha Rajamanickam

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Succession Act, 1925 — Section 232, 276

Citation : (2007) 04 MAD CK 0005

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Nadanasabapathy, for the Appellant; Stephen, for Shalom Associates, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The plaintiff originally filed a petition under Sections 232 and 276 of the Indian Succession Act, 1925 seeking grant of

Letters of Administration of the Will executed by his mother Mrs. R. Leelavathi. As the respondents filed caveat, the aforesaid Original Petition

was converted into Testamentary Original Suit.

2. The plaintiff and the second defendant are the son and daughter respectively of the first defendant A. Ramachandra Shastri and his wife late R.

Leelavathi.

3. The plaintiff would contend that the said Leelavathi executed a registered Will dated 16.12.2000 prior to her death on 12.5.2001 in a sound

and disposing state of mind. She, being the absolute owner of the A schedule property, executed the said Will when she was admitted to Devaki

Hospital, Chennai. The B schedule property of the testatrix which also absolutely belonged to her was bequeathed in favour of the second

defendant. Therefore, the plaintiff seeks for grant of Letters of Administration in the absence of any executor appointed under the Will.

4. The first defendant, the is the Zather of the plaintiff, has not chosen to file written statement on his behalf. But, the second defendant, denying the averment found in the plaint, would contend in the written statement that the Will has come into existence under coercion, force and undue influence. The Will was prepared on the advice of the plaintiff in connivance with the first defendant. The testatrix was not in proper sense and normalcy and was completely sick. The mind of the testatrix was very feeble and she was not able to act on her free will. The Will has no sanctity in law as the same was executed while she was not in sound and disposing state of mind. The testatrix had no fund of her own to acquire the schedule mentioned properties and the same were acquired out of the sale proceeds of the share of the joint family property allotted to the testatrix by her parents at Trichendur. The first defendant was hand in glove with the plaintiff in forging the Will. The second defendant is entitled to 1/3 share in the joint family property. The testatrix was so seriously ill and was not able to move about. The Registrar was called to the hospital to approve the execution of the Will. Thus, the Will is not genuine.

5. Based on the pleadings, the following issues were framed:

- (i) Whether the Will was executed when the testatrix was in sound disposing state of mind.
- (ii) Whether the testatrix was the absolute owner of the properties bequeathed under the Will.

6. Issues 1 and 2:- learned Counsel for the plaintiff would submit that the very fact that the testatrix had issued notice under Ex.P10 dated 26.2.2000 to the second defendant and her husband directing them to vacate the property bequeathed by the testatrix in favour of the propounder would go to show that the testatrix had an idea to bequeath the A schedule property in favour of the plaintiff. PW2, the first defendant, who is none other than the father of the plaintiff and the second defendant has figured as one of the attesting witnesses to the Will, Ex.P1. The execution of the Will stood proved by the plaintiff by examining both the attesting witnesses viz., P.Ws.2 and 3. The discharge summary, Ex.P8 and final bill, Ex.P9 would go to show that the testatrix was very much conscious at the time of

execution of the Will. PW3, who is an independent attesting witness, has spoken to the sound and disposing state of mind of the (sic) (sic) at the time of execution of the Will. The affidavit given in favour of the second defendant under Ex.D2 was retracted by him under the affidavit, Ex.P12 given in favour of the plaintiff. Ex.P12 would show that there had been some undue influence on the plaintiff by the second defendant and her husband to execute the affidavit, Ex.D2 in favour of the second defendant. The learned Counsel for the plaintiff also would bring to the notice of the court that in the written statement, it has been alleged by the second defendant that force was used to obtain the signature of the testatrix, but, in her evidence, the signature of the testatrix found in the Will was totally denied. Further, the learned Counsel for the plaintiff would submit that there is no unnatural conduct on the part of the testatrix to execute the Will bequeathing her prime property to her son and her property of lesser value to her daughter. As there is no suspicious circumstances surrounding the Will, the learned Counsel for the plaintiff would submit that the plaintiff is entitled to Letters of Administration.

7. Learned Counsel for the second defendant would contend that the propounder had taken an active part in the execution of the Will. Not only the propounder, but also one of the attesting witnesses viz., PW3 has categorically admitted the larger role played by the propounder in the matter of execution of the Will, Ex.P1. He would further contend that the discharge summary, Ex.P8 and final bill, Ex.P9 would go to show that at the time of execution of the Will, the testatrix was under intensive medical care. The very fact that the testatrix was admitted and readmitted to the Hospital for intensive care treatment would establish that the testatrix was very feeble at the time of execution of the Will. There is some delay in the registration of the Will. Though the registration of the Will had taken place long after the execution of the Will, PW3 would depose that both had taken place on the very same day. The signature of the testatrix found on the reverse of the first page of the Will is found to be totally different from her signatures found in the other parts of the Will, Ex.P1. The letter, Ex.D1 written by the first defendant to the second defendant cautioning her about the Will that came to be executed by the testatrix speaks for itself about the force applied on the testatrix, who was feeble, for the

execution of the Will. The further affidavit, Ex.D2 would strengthen the case of the- second defendant that the Will was executed under force and

undue influence. It is his further submission that the contents of the affidavit, Ex.P12 given by the first defendant in favour of the plaintiff appears to

be totally artificial.

8. The disputed Will has come into existence on 16.12.2000. On a careful perusal of the discharge summary, Ex.P8 and final bill, Ex.P9, it is found

that on 16.12.2000, an ECG was taken when the testatrix was admitted as inpatient in Devaki Hospital Limited, Chennai. There is no dispute to

the fact that the testatrix Leelavathi encountered cardiac problem. Four days prior to the execution of the Will, she was under oxygen. She was put

on ventilator two days after the execution of the Will as she had to undergo some operation on that day. The Will was registered only on

26.12.2000. It had taken ten long days for registration of the Will. Though she was discharged on 5.1.2001, she had been readmitted on 8.1.2001

and again she was discharged on 12.1.2001. But, unfortunately, she passed away on 12.5.2001.

9. As rightly pointed out by the learned Counsel for the second defendant, PW2, who is none other than the father of -the plaintiff- would

categorically admit that the signature of the testatrix found on the reverse of the first sheet of the Will, Ex.P1 differs from the signatures of the

testatrix found in the other part of the Will. Of course, PW2 would explain away saying that the testatrix had to be assisted when she was lying on

the bed to put her signature and therefore, the signature found on the reverse of the first sheet of the Will slightly differed. The very fact that it had

taken ten days for registration of the Will would go to show that the physical and mental condition of the testatrix did not permit the registration of

the Will forthwith.

10. The discharge summary and the final bills referred to above would also indicate that the testatrix was not stable during the time of execution of

the Will. She had been under intensive care, though not in the intensive care unit, on account of her unstable health condition. To top it all, PW2

who has been arrayed as first defendant in this case has virtually dropped a bombshell cautioning and alerting the second defendant under letter

Ex.D1 dated 10.10.2002. PW2 has categorically" admitted his signature found in

Ex.D1. In the said letter, he has clearly stated that force was used by the plaintiff on the testatrix (sic) sign the Will and PW2 also was forced to sign in the said Will as attestor. The content of the said letter also was not disputed by PW2. The said letter" uproots the plea of the plaintiff that the Will was executed by the testatrix on her own volition. But, not stopping with the letter, Ex.D1, PW2 has also given an affidavit, Ex.D2 dated 12.2.2006 reinforcing the stand taken by him in the letter,

Ex.D1. But, after five long months, he comes out with another affidavit, Ex.P12 dated 3.7.2006 to the effect that he gave an affidavit in favour of the second defendant under the undue influence of the second defendant and her husband. In the said affidavit, Ex.P12, very strangely, he would reel out that at the age of 80, he had some illicit intimacy with one Chandra, daughter of Sankara Iyer and at her house, the second defendant and her husband, promising to pay money as required by the said lady, executed an affidavit in favour of the second defendant. Though PW2 has referred to the affidavit, Ex.D2 that it had come into existence on account of undue influence exerted by the second defendant and her husband, he has not spoken anything about the letter, Ex.D1 dated 10.10.2002. The tenor of the letter, Ex.D1-also was reiterated in the -latest letter, Ex.D3- dated 8.2.2006 sent to the second defendant. The signature of the first defendant in the said letter Ex.D3 was also admitted by him. There is also no denial of the content thereof. In the face of the letters, Exs.D1 and D3 and the affidavit, Ex.D2, the court finds that it is highly unsafe to rely on the evidence of PW2 given in support of the case of the Plaintiff.

11. It is the admitted version of P.Ws. 1, 2 and 3 that the propounder had taken an active role in the matter of execution of the Will, Ex.P1. It was he who advised the Advocate to prepare the Will. It was he who had secured the presence of PW3 to the hospital for the purpose of attesting the Will. The role of the propounder also creates suspicion in the mind of the court about the free will exercised by the testatrix at the time of execution of the Will. It is not as if a self-contradictory stand was taken by the second defendant. The second defendant has contended in the written statement itself that the Will was created under force and undue influence for the purpose of knocking away the valuable property.

12. Though it is found that there is no unnatural disposition, it has been

established that the propounder had taken a prominent part in the execution of the Will which confers substantial benefit on him. Further, it has already been proved by the second defendant that force and undue influence had been used by the plaintiff to get the Will executed by his late mother Leelavathi. The medical records would go to show that the testatrix was unstable and physically unfit to execute the Will.

13. Though it has been contended in the written statement that the testatrix had no independent source of income to purchase the A schedule property, the court finds that there is absolutely no evidence, to tilt the legal presumption that the property purchased under the name of the testatrix was that of her property. Further, it has been contended by the second defendant that out of the resources of the sale proceedings of the joint family property of the parents of the testatrix, the property bequeathed was purchased. But, there is no evidence to substantiate such a plea.

Further, even assuming for the sake of argument that the testatrix has got some resources from out of her family property, the moment such resources came to her hands, it became her absolute property. No heir of a female member can claim that he or she has not right over the property acquired from such source by a female member. It is held that the testatrix was the absolute owner of the properties bequeathed under the Will, but, the Will was executed when the testatrix was not in a sound and disposing state of mind and it was executed under undue influence and force exerted by the plaintiff on the testatrix. The issues are answered accordingly.

14. In view of the above, the suit stands dismissed. There is no order as to costs.