

D. R. Krishnaswamy

Vs

Wesleyan Methodist Mission Trust Association and Others

Civil Appeals Nos. 2139 to 2141(N) of 1969

(A.C. Gupta, P.S. Kailasam JJ)

21.09.1979

JUDGMENT

GUPTA, J. –

1. These three appeals arise out of a suit in which the plaintiff, who happens to be the appellant in all these appeals, asks for the following reliefs :

(a) a declaration that he is the owner of the property in suit measuring about 27,000 square yards of land in Bangalore city under a will dated July 9, 1959 executed by one Sripada Rao;

(b) a declaration that the compromise deed dated August 26, 1959 executed by and between Sripada Rao, defendants 1 to 4 and the father of defendants 5 and 6 was null and void and that the real as well as the beneficial interest in the property in suit continued to vest in Sripada Rao;

(c) recovery of possession of the property from the defendants and mesne profits.

Alternatively, the plaintiff seeks a declaration that the property is liable to be attached and sold for the realisation of a sum of Rs. 19,850 decreed in his favour by the Additional Civil Judge, Bangalore in O.S. No. 74 of 1960 upon a promissory note stated to have been executed by Sripada Rao : the suit was brought by the present appellant against the widow and there sons of Sripada Rao.

2. The trial Court held that the will set up by the plaintiff was genuine, but the testator was not the owner of the property bequeathed as he had sold it to the father of defendants 5 and 6; however, the entire consideration not having been paid the testator had beneficial interest in the property by way of unpaid vendor's lien to which right the plaintiff had succeeded by virtue of the will. The trial Court also held that the compromise deed (Ex. D-6) was void and that the plaintiff was entitled to the beneficial interest which Sripada had on the property. The prayers for declaration of title to the disputed property and recovery of possession were refused. The alternative relief asked for was also not granted. From the decision of the trial Court the plaintiff preferred an appeal to the High Court of Mysore at Bangalore against the part of the decree refusing some of the reliefs he had asked for. Appeals were also filed respectively by defendant 1, and defendants 2 to 4 against the decree in favour of the plaintiff. The High Court disagreeing with the finding of the trial Court held that the will was not genuine and on this view dismissed the suit. The High Court does not appear to have recorded any finding on the other reliefs allowed by the trial Court. Accordingly, the High Court allowed the two appeals filed by the defendants and dismissed the plaintiff's appeal.

3. Briefly, these are the facts of the case. The disputed property originally belonged to the first defendant, Wesleyan Methodist Mission Trust Association. One John Appaji and three others claiming to have obtained the property under the will of one Mary Deyaka, who is said to have held the property on a permanent lease from the first defendant, sold it to Sripada Rao on December 18, 1945 for Rs. 57,000. The sale deed was registered on May 16, 1946. On May 15, 1946, a day before the registration of the sale deed, Sripada executed a mortgage bond (Ex. D-9) for Rs. 28,000 in favour of defendants 2 and 3. The property offered as security was the land in suit and three other properties belonging to Sripada. The mortgage deed (Ex. D-9) states that it was being executed for raising money to pay the price of the land to John Appaji and others. The mortgage deed was also registered on May 16 and on the same day Sripada entered into an agreement (Ex. D-13) to sell 5557 square yards out of the disputed property to defendants 2 and 3 for Rs. 16,725. On December 10, 1946 Sripada Rao executed another mortgage of the suit property in favour of defendant 4 for a consideration of Rs. 1 lakh. On December 12, 1947 Sripada Rao executed a sale deed (Ex. D-14) in pursuance of the agreement to sell (Ex. D-13) conveying the property to defendants 2 and 3. The balance of consideration, Rs. 14,725 was to be adjusted against the dues under the mortgage bond (Ex. D-9). It appears that in the year 1949, the first defendant brought a suit against Sripada impleading the present defendants 2 to 4 and father of defendants 5 and 6, challenging Sripada's title to the disputed property alleging that Sripada's vendors were only licensees and not permanent lessees of the land. This suit, decreed by the trial Court, was ultimately dismissed by the High Court on appeal on the finding that Sripada's vendors were permanent tenants. On March 13, 1951, Sripada executed a sale deed (Ex. D-2) purporting to convey the property in suit to the father of defendants 5 and 6 for a consideration of Rs. 1,25,000. On the same day Sripada executed another sale deed (Ex. D-3) conveying certain other properties including his residential house at Srirampuram to the father of defendants 5 and 6 for Rs. 25,000. The compromise deed (Ex. D-6) was executed by and between Sripada Rao, defendants 1 to 4 and father of defendants 5 and 6 which was described as "settlement of disputed claims". On July 9, 1959, the will in question is stated to have been executed by Sripada. Sripada died on October 18, 1959.

4. The trial Court found that Sripada Rao had executed the will (Ex. D-2) "of his free will and volition when he was in a sound state of mind"; the trial Court came to this conclusion having considered the circumstances pointed out on behalf of defendants as suspicious. The will is in two pages, the first page contain two signatures of Sripada Rao at the foot of the page and the second page only one. Starting with preamble that the testator was in good health and his mental faculties were unimpaired, the will refers to his two sons who it is said, lived apart and were of no help to him in his old age. It is mentioned that the plaintiff had advanced money to his from time to time and that the testator was bequeathing the property to him to repay the debt and also because of the friendship, love and affection he had for the plaintiff. The will contains a statement that Sripada had not alienated the property and that if any dispute arose over the property, the plaintiff was to face it. There is another statement to the effect that Sripada had made provision for his wife and his unmarried daughter by giving them the house in which he resided and certain other properties.

5. The circumstances alleged by the defendants as suspicious are mainly as follows. The fact that on the first page of the will Sripada had signed twice and on the second page only once, was said to be a suspicious feature. One of the attesting witnesses, PW 2 Venkatarao, as retired Manager of the Chief Engineer's Office in Bangalore, has said that the first signature on the first page was "not perfect" because Sripada's hand was shaking and that was what necessitated a second signature below the first. The explanation was accepted by the trial Court as reasonable and the Civil Judge added that "the very fact that there were two signatures on the first page ... is an indication of the will". It may be stated here that the genuineness of the signatures was not questioned. It was

suggested to the plaintiff in cross-examination that he must have secured some blank papers bearing Sripada's signatures and used them to fabricate the will. The trial Court noted the fact that the plaintiff had been helping Sripada Rao in the litigations in which Sripada was involved, but held that Sripada was in full possession of all his faculties and it was unreasonable to think that he would entrust blank papers containing his signatures to any person.

6. It was contended that the will was wholly unnatural and many of the recitals therein were false. The trial Court pointed out that Sripada had no great attachment for his sons and two of his daughters who were married. It is a fact that the recital that Sripada had made provision for his wife and the unmarried daughter by giving them the house in which he was residing at Srirampuram and certain other property was untrue. It has been stated already that for a consideration of Rs. 25,000, Sripada Rao had sold the residential house and certain other properties at Bangalore to the father of defendants 5 and 6. It is also true that except the properties covered by the two sale deeds Sripada Rao had executed in favour of the father of defendants 5 and 6, he had no other property. The trial Court pointed out that it was not as if Sripada had bequeathed by his will a valuable property to the plaintiff depriving his own wife and children. The property was heavily encumbered as would appear from the facts stated above. According to the trial Court, the way Sripada juggled with the property, promptly mortgaging it with defendants 2 and 3 after having purchased the property but before the sale deed was registered in order to be able to pay the sale price, then selling a part of the property to defendants 2 to 3, later executing another mortgage in favour of defendant 4, and afterwards conveying the property to the father of defendants 5 and 6 shows that Sripada was an adventurer and proves that the deliberately untrue statements made in the will were quite consistent with his character. The trial Court also pointed out another statement in the will which is significant in this connection, that the plaintiff was taking the property at his own risk with the prospect of litigation. According to the trial Court, having regard to the kind of man Sripada was, the incorrect recitals in the will should not be considered unnatural. It was contended on behalf of defendants 1 and 6 that the disposition under the will apparently discharged the debt that Sripada owed to the plaintiff and the fact that the plaintiff instituted a suit on the promissory note without mentioning anything in the plaint of that suit about the will suggested that the will was not in existence on the day the suit was instituted. According to the trial Court all that could be inferred from this circumstance was that the plaintiff was an unscrupulous man but having regard to the other circumstances it would not justify a finding that the will was fabricated.

7. The trial Court further noted that the two attesting witnesses were respectable men who remained unshaken in the face of gruelling cross-examination and that they were "not persons who can be expected to join hands with the plaintiff in cooking up the will". The trial Court also pointed out that Sripada's widow and children who were impleaded as defendants in the suit did not appear to challenge the genuineness of the will. This, according to the trial Court, meant that they impliedly admitted execution of the will by Sripada Rao.

8. The High Court found that the will was not genuine. The very appearance of the document seemed suspicious to the learned Judges. This is what the High Court says on this aspect :

The size of the letters and the spacing between the lines in the two pages of the document vary; on the first page the size of the letters is small and the spacing between the lines is uniform; on the second page, the letters are bigger and the spacing between the lines is large. About an inch of space is left between the schedule of the property bequeathed and the concluding part of the body of the will. The document has been written on two sheets of paper in a manner which discloses a

deliberate attempt made to adjust the writing to the alleged signature of Sripada Rao.

9. We have examined the documents for ourselves. To us it did not seem that there was an attempt to adjust the writing to Sripada's signatures which appeared on both sheets of paper. The genuineness of the signatures has not been questioned; what is alleged is that the plaintiff somehow got hold of two blank sheets of paper signed by Sripada who was in will was fabricated. The trial Court had found that Sripada who was in full possession of his faculties was not the sort of man who would leave blank papers bearing his signature lying about making it easy for anyone to put them to some use not intended by Sripada. The High Court does not appear to have considered this aspect.

10. Another circumstance on which the High Court finds that the will was not genuine is the incorrect statement made in the will that Sripada had left his residential house for his wife and unmarried daughter. This certainly was a false statement, but the High Court does not take note of the reasons which prompted the trial Court not to take the incorrect recitals in the will as proof of the will not being genuine. In our opinion, the view taken by the trial Court was reasonable and we are inclined to agree with it. The other important factor that weighed with the High Court related to the promissory note executed by Sripada Rao in favour of the appellant. According to the High Court the suit that the plaintiff instituted against Sripada Rao's heirs on the basis of this promissory note can be explained only on the hypothesis that the will was not in existence on March 23, 1960, when that suit was filed. The High Court observes that if the plaintiff had "accepted the legacy which was in satisfaction of his debt, he could not have sued for the debt. It is not the plaintiff's case that he had made the election not to accept the legacy". According to the trial Court, the fact that the plaintiff "instituted the suit suppressing the will may be an indication that plaintiff may be quite scrupulous" but would not "justify a finding that the will was faked". Having considered the facts of the case we agree with the view taken by the trial Court. The High Court was also in "considerable doubt about the alleged borrowings by Sripada Rao from the plaintiff" and held that "if the debt is false, the reasonable inference is that the will is not true". No one has questioned the genuineness of the promissory note executed by Sripada Rao which proves that the plaintiff did lend money to him. Sripada Rao's widow and sons filed written statements in the suit brought by the plaintiff upon the promissory note, but did not ultimately contest and the suit was decreed ex parte. The High Court observes that they did not "put up a serious contest". There may have been various reasons why the defendants in that suit failed to contest and we do not see how this fact can be taken as a circumstance against the plaintiff in the present suit; it can hardly be suggested that it was a collusive affair between the plaintiff and Sripada's heirs.

11. The High Court does not refer to the finding recorded by the trial Court that the two attesting witnesses PWs 2 and 3 were respectable persons and that it was difficult to associate them with fabrication of the will.

12. The heirs and legal representatives of Sripada Rao who were impleaded in these appeals as respondents have applied before us for transposing them appellants. This again is an indication that they do not consider the will as fabricated. However, in view of the order we propose to make in this appeal no order is necessary on this application.

13. It appears to us that the High Court in holding that the will was fabricated did not advert to all the various aspects of the matter considered by the trial Court. The view taken by the trial Court seems to us to be reasonable and we do not find any valid ground why it should not be accepted. The appeals are allowed and the matter is remitted to the High Court for determination of the other questions involved in the appeals preferred before it. Costs of the appeals in this Court will abide

the final result : one set of hearing fee.

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