SUPREME COURT OF INDIA

Mathew Oommen

Vs

Suseela Mathew

Appeal (Civil) 2034 of 2003

(B. P. Singh and Arun Kumar, JJ)

03.01.2006

JUDGMENT

ARUN KUMAR, J.

The appellant filed a petition for grant of letters of administration in respect of a Will said to have been executed by his father Late K.O. Mathew. K.O. Mathew was a practicing advocate of the local Bar. The will in question is said to have been executed on 15.10.1984. The testator died on 24.10.1984. The appellant is the

Sole beneficiary under the will. The testator was survived by three children i.e. son, the appellant herein and two daughters named Suseela, the contest in respondent, and Leela. Both the daughters were married during the lifetime of the testator and admittedly had been well provided for at the time of their marriage by the father Respondent is the only contestant, who herself is an officer in the local Electricity Board while her husband was an officer in the Army.

The other daughter Leela is a practicing doctor with MD qualification. The second daughter is not a

party to the proceedings. She never contested the Will of her father. The parties are Christians and were governed by the Travancore Christian Succession Act, 1917. Under this Act when a daughter is married and she is given Rs.5000/- or more at the time of marriage, she has no right of inheritance in her father's estate. Respondent Suseela had admitted in her statement as DW 1 that her father had given her Rs.30, 000/- and 45 gold sovereigns at the time of her marriage. However, a question of validity of the Travancore Christian Succession Act, 1917 had been raised and a writ petition in this behalf was pending in this court at the relevant time. The testator who was himself a lawyer knew about the pendency of the writ petition challenging the said Act and was therefore, aware of the fact that in the event of the said Act being declared illegal, his daughters would become entitled to share in his estate. This could be the reason that he executed the Will in question.

The Will Exhibit A1 is hand written and is on a letter head of the testator. It is in the hand writing of his junior named George Vallakalil. It bears the signature of the testator as well as of one Oommen who has signed as a witness. Both the witnesses to the Will are the distant relations of the testator.

The appellant applied for grant of Letters of Administration with respect to the Will. On publication of the notice of the petition for grant of letters of administration with respect to the Will, respondent Suseela filed her objection opposing the grant of letters of administration. The propounded of the Will is the son of the testator while the contestant is the daughter of the testator. Thus both the parties are real brother and sister. The trial Court held that the Will Exhibit A1 appears to have been written in a natural flow. It refuted the stand of the objector that it had been prepared on a blank signed paper left by K.O. Mathew. The interesting part is that signatures of the testator on the Will are not disputed by the respondent. Her only case is that the Will has been prepared on a signed blank letter pad. The trial Court rejected the theory of fabrication of the Will. The trial Court observed that the testator was a leading advocate and it was untenable that he would leave blank signed letter heads on his table. In fact, respondent who appeared as DW 1 admitted that her father did not usually leave signed blank letter heads. PW 1 who is the scribe as well as attesting witness of the Will was admittedly working as junior with the late testator. His presence at the time of execution of the Will appears to be natural. He was working in the office of testator as his junior. The senior must have given his mind about execution of the Will and as per instructions of his senior, the Will must have been scribed by the junior advocate. Both the attesting witnesses of the Will have appeared as PW 1 and PW 2. They have fully supported the Will by stating necessary facts. In fact, PW 1 who is scribe of the Will stated that he read the Will to the testator after he had written it in his own hand. After reading and signing the Will, the testator returned the Will to PW 1 who signed it thereafter in the presence of the testator. Thereafter the PW 1 handed over the Will to PW 2 who also signed it in the presence of testator. PW 2 stated that he was present throughout the execution of the Will. The trial Court held the Will to be genuine and granted the letters of administration with respect to the Will Exhibit A1.

By a strange and wholly untenable reasoning the High Court set aside the well considered judgment of the trial Court and rejected the Will. According to the High Court, the language of the Will is not normal. Secondly, the High Court observed that if the testator wanted to execute a Will he could have done so in a proper manner. Thirdly, the High Court observed that in view of the Travancore

Christian Succession Act, 1917, the testator who was himself an advocate, knew that there was no need for a Will, why should testator make it? We have perused the photocopy of the Will which is on record. It is a short Will and is reproduced as under:

(TYPED COPY OF ANNEXURE-P1) "K.O. MATHEW B.A., B.L. Phone No.246 ADVOCATE MAVELIKARA VALLAKALIL KERALA Will executed by K.O. Mathew, Advocate, Vallakalil, Mavelikara)

I am executing this will with a free mind and independent decision. I have two daughters who had been married and they were given their due shares. Therefore I hereby bequeath all my assets including my residence and its premises extending 1 acre 52 = cents comprised in Sy. Nos.138 and 139 to my son Mathew Oommen. My wife will be entitled to reside in the building and take the income from the above property.

Signed this the 15th day of October, 1984 in the presence of SD/- K.O. Mathew

1. Written by George Vallakalil, Advocate Sd/-

2. Witness K.C. Oommen Vallakalil Kalapurail Kuttempuram. SD/- /True copy/"

We find nothing abnormal or unnatural in the above document. There is nothing unnatural in a senior advocate of advance age to ask his junior advocate to write down something which he would like to be written. This must have happened in the present case. Regarding the other question that there was no need to make a Will in view of the Travancore Christian Succession Act, 1917, we are of the view that it was all the more important for the testator to make the Will because as a senior advocate he knew that the validity of the Act had been questioned in this Court and in the event of the Act being declared invalid, the course of inheritance would change and daughters would get a share in his estate, which he did not want. Learned counsel for the respondent argued that the last few words in the body of the Will appear to have been squeezed in. We are unable to accept this submission. A bare perusal of the Will is sufficient to reject this plea. The signatures of the testator on the Will are not disputed. The statements of PW 1 and PW 2 as attesting witnesses of the Will are quite natural and trustworthy. One of the attesting witnesses was the junior advocate working with testator in his office. He has also scribed the Will. He has appeared as PW 1 to support the execution of the Will. He states that he is an attesting witness to the Will as well as scribe of the Will. The other attesting witness has also appeared as PW 2. He is a distant relation of the testator. From all this we find execution of the Will quite natural and normal. We are unable to accept the contention of the learned counsel for the respondent that a senior lawyer will not discuss about the Will with his junior. It was also suggested that nothing prevented the testator from writing the Will himself.

This is no ground to reject a Will which is otherwise perfect.

Another circumstance mentioned by the learned counsel for the respondent for challenging the Will is that the beneficiary never applied for probate or for mutation of the property in his name soon after the death of the father. This again is no reason to dislodge the Will. The learned counsel for the respondent also argued that the Will had not been attested by two attesting witnesses as required under the law. In support of this argument it was submitted that one of the alleged attesting witness is only scribe of the Will and is not attesting witness. Regarding this objection we may note that there is no requirement in law that a scribe cannot be an attesting witness. The person concerned has appeared in the witness box as PW 1 and has clearly stated that he is a scribe of the Will as well as he is an attesting witness of the Will. For attestation what is required is an intention to attest which is clear from the statement of PW 1. He categorically stated that he has signed as an attester and scribe. In our view, the requirement of attestation of the Will by two witnesses is fully met in the present case. After the execution was complete, the testator kept the Will in the drawer of his table. PW 1 has also mentioned the fact that the Will was executed because the case was pending in this Court challenging Travancore Christian Succession Act, 1917.

The testator who was himself a lawyer knew this fact. A perusal of the statements of PW1, PW2 and PW3 further shows that they have not been cross examined on the points now sought to be urged before this Court. It was never suggested to the witnesses that the Will was scribed on a blank letter head containing signatures of the testator. It was never suggested that the Will had been fabricated.

It is not necessary to go into the judgments cited by the learned counsel for respondent which lay down requirements for attestation of Wills. We find no merit in any of the contentions raised on behalf of objector, the respondent herein. The impugned judgment of the High Court cannot be sustained. The same is accordingly set aside and that of the trial Court is restored. The appeal is allowed and stands disposed of accordingly. No order as to cost.