2024 INSC 164

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8935 OF 2011

THANGAM AND ANOTHER **... Appellant(s)**

VERSUS

NAVAMANI AMMAL **... Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

1. The issue under consideration in the present appeal is regarding genuineness of the Will dated 09.10.1984, which is a registered document, executed by Palaniandi Udyar in favour of Navamani Amma.

2. A suit[1] filed by the respondent/plaintiff for declaration and injunction was decreed by the Trial Court[2], holding the Will to be

[1] O.S. No. 402 of 1986.
[2] Additional District Munsif Court, Ariyalur.

genuine. In appeal[3] by the appellants, judgment and decree of the Trial Court was reversed by the First Appellate Court[4]. In second appeal[5] filed by the respondent the judgment and decree of the First Appellate Court was set aside and that of the Trial Court was restored by the High Court[6].

3. Before we embark upon to consider the issues in detail, we deem it appropriate to mention the relations between the parties and certain brief facts.

3.1. The testator of the Will dated 09.10.1984, Palaniandi Udayar, was the husband of appellant no. 1 Thangam and father of appellant no. 2 Laila.

3.2. The Will was executed on 09.10.1984 in favour of Navamani Amma/Plaintiff, who as per the narration in the Will is said to be daughter of the brother of the testator.

3.3. The defendant in the suit originally filed was widow of the testator, however, later on his minor daughter was also impleaded. Both are the appellants before this Court.

[3] Appeal Suit No. 7 of 1991.
[4] Subordinate Judge, Ariyalur.
[5] Second Appeal No. 1344 of 1996.
[6] High Court of Judicature at Madras.

3.4 The appellant no. 1 is the third wife of the testator. The earlier two wives expired and were not having any child from the loins of the testator.

3.5 Even as per the admitted case of the defendant no. 1/widow of the testator, the testator was having total land about 8 acres besides three houses.

3.6 By way of Will, the testator had bequeathed approximately 3.5 Acres of land in favour of the plaintiff stating therein that she is like his daughter, being daughter of his brother. The value of the suit property was estimated to be about ₹16,000/-.

ARGUMENTS

4. In the aforesaid factual matrix, the argument raised by learned counsel for the appellants challenging the judgment and decree of the High Court was that the execution of Will was surrounded by various suspicious circumstances and deserves to be discarded as was rightly done by the First Appellate Court. The finding of facts recorded by the First Appellate Court was erroneously reversed by the High Court without the same being perverse. Re-appreciation of the facts merely to come to another possible conclusion does not fall within the scope of

consideration of a matter in second appeal. There was no substantial question of law involved in the second appeal before the High Court. There were discrepancies in the statements of the scribe and the attesting witnesses to the Will. The health of the testator was not good and he was not in a position to understand and comprehend the contents of the Will. There were differences in the thumb impressions of the testator on the Will and on the register in the office of the Sub-Registrar.

5. Though, admittedly the testator left behind his widow and a minor daughter but there is no mention in the Will about the same. How their interest was taken care of, the Will is silent. In fact, the appellants were in possession of the suit property. The suit filed by the respondent was totally misconceived.

6. On the other hand, learned counsel for the respondent submitted that the execution of Will by a person in favour of any other relative always would mean that the testator wishes to take away some property from the normal course of inheritance. In fact, the respondent being like daughter to the testator was taking care of his health, who was suffering from asthma and chronic cough. It is not that the entire property owned by the testator was given to the respondent by way of Will, rather

it was only a part thereof. She is in possession of the suit property after the death of the testator. The need to file the suit arose more than two years after the death of the testator as her possession was disturbed by the appellants. Otherwise also the appellants had not taken any step to take care of the testator when he was not keeping good health or the property left by him after his death. Admittedly, the appellant no. 1 was living away from the testator. Even at the time of his death the appellants were not present as she came later on. Even the expenses for performing last rites of the testator were borne by the husband of the respondent. There is no error in the judgment of the High Court. The findings recorded by the First Appellate Court being totally perverse were rightly interfered by the High Court.

6.1 In the written statement filed by the appellants, there was no specific denial to the claim made by the respondent/plaintiff. No para-wise reply was given. In the absence thereof, the allegations in the plaint were deemed to be admitted.

DISCUSSION

7. Heard learned counsel for the parties and perused the relevant referred record. We may record that the translated copies of

whatever documents have been placed on record by the parties, are being considered as such as to the same, no dispute has been raised by the either side.

8. What is required to be considered while examining the correctness of the judgment of the High Court is as to whether the Will in question was surrounded by suspicious circumstances whereby the testator had not mentioned the names of his widow and minor daughter in the Will and has bequeathed a part of his property to the respondent.

8.1 The appellant no. 1 is the third wife of the testator whereas the appellant no. 2 is the daughter. From the earlier two wives no child was born.

9. Firstly, coming to the health of the testator the Plaintiff/PW-1 stated in her examination-in-chief that though the testator was having Asthma but otherwise he was in good health condition. In her Cross-Examination PW-1 stated that the testator was suffering from Asthma and Cough for about 5 to 6 years. She denied that the testator was having any drinking habit. She denied the suggestion that the testator was bed-ridden for three months before executing the Will.

9.1 PW-2/Vadivelu, who is an attesting witness to the Will, in his cross-examination stated that he inquired about the health of the testator and he told PW-2 that he was having some cough problem and was otherwise suffering from T.B.

9.2 PW-3/Govindasamy, who was a witness in the office of Sub-Registrar, in his cross-examination stated that at the time of execution of Will the testator was having cough.

9.3 PW-4/Subramanian, who is Scribe of the Will, stated in his examination-in-chief that at the time of execution of Will the testator was in good physical condition and he was having cough only. He was not put any question in this regard in cross-examination.

9.4 DW-1/Thangam Ammal, who is the widow of the testator, stated in her examination-in-chief that before his death the testator 'was suffering from lever wound and he had dysentery and suffered very much' (sic). DW-1 in her cross-examination sated that three months before his death the testator was not in good physique and before that he was in good condition. DW-1 further stated that the testator was bed ridden for 3 months and she was taking care of him.

9.5 From the aforesaid evidence of the witnesses with reference to the health of the testator we do not find that he was not in good senses and was unable to understand his welfare or take correct decisions. Hence, the Will cannot be held to be suspicious on the ground of the alleged ill-health of the testator at the time of the execution of the Will.

10. Now, coming to another aspect with reference to the genuineness of the Will, the PW-4/Subramanian, who is scribe of the Will, stated in his examination-in-chief that the testator had put his thumb impression on the Will and that he witnessed the same. He further stated the Will was registered in the office of Sub-Registrar.

10.1 In his cross-examination, he stated that on enquiry testator told him that the Plaintiff can take the suit property and other properties can be taken by the Defendants i.e., his wife and daughter. This shows that even at the time of execution of the Will, the testator was fully conscious of the welfare of his widow and minor daughter as sufficient property was left for them.

11. The Plaintiff examined PW-2/Vadivelu, who was the attesting witness to the Will. In his examination-in-chief he stated that the testator

was very well known to him and that he was witness in the above Will. He stated that the Will was written under a tree at Palavur. Details were given by the Testator. After writing of Will, the testator asked PW-4/scribe to read over the same. After hearing and being satisfied the testator had put his thumb impression. He and one other attesting witness, Muruganian (DW-2), had witnessed the testator putting thumb impression on the Will. In his cross-examination he stated that the Will was written without compulsion and in good conscious were expressed by Testator alone. He asked testator whether he was having any legal heir and testator told him that as per his desire alone the Will was written.

11.1 The Defendants examined Murugaian, who was also an attesting witness to the Will, as DW-2, who in his examination-in-chief stated that he was asked by Paramasivam, who is husband of the Plaintiff, to be witness in the office of Sub-Registrar. He further stated that he was requested to sign as witness and after putting his signature he returned. DW-2 further stated that he did not see the testator put his thumb impression. In Cross-examination DW-2 stated that he saw the testator sitting under a tree and that the testator told him that he was writing the Will in favour of his heirs.

12. It is the admitted case of the appellants that the testator left behind about 8 acres of land and three houses. What has been bequeathed to the respondent is merely a part of testator's entire property i.e. land measuring approximately 3.5 Acres. Meaning thereby the balance property of the testator is in possession of widow and daughter. This is how the interest of the natural legal heirs has been taken care of.

12.1 The reason to bequeath a part of the property in favour of the respondent is also evident from the material available on record. It has come in evidence that the testator was not keeping good heath as he was suffering from asthma and cough. The appellants were not living with him for quite sometime as it is the admitted case of DW-1 in her cross-examination that she had gone to her paternal home on account of marriage of her brother and was not living with the testator at the time of execution of Will. It has also come on record that she was not present when the testator died. Expenses for his last rites were borne by the husband of the respondent who was taking care of the land of the testator.

12.2 There is nothing on record to suggest that the appellants were taking care of the property left by the testator immediately after his death

or that any steps were taken by them to get the same mutated in their favour.

13. From the aforesaid evidence on record, in our opinion, no error has been committed by the High Court in holding that the Will was not surrounded by the suspicious circumstances as the scribe and one of the witnesses were unison. The testator was conscious of the fact that he had a wife and a minor child whose interest had been taken care of by leaving part of the property for them. It came in response to a specific question asked by PW-4 to the testator at the time of execution of the Will. It was so stated by PW-4 in his cross-examination. Even in para 14 of the written statement, the appellants stated that they are enjoying the suit properties and other properties left by the testator. This clearly shows that certain part of the properties was left by the testator for his widow and minor daughter.

14. Before we part with the judgment we are constraint to observe the manner in which the pleadings have been filed in the Trial Courts or may be in some cases in the High Courts.

14.1 A perusal of the plaint filed by the respondent shows that it contains ten paragraphs besides the prayer. In the written statement filed

by the appellants, no specific para-wise reply was given. It was the own story of the respondent containing fifteen paragraphs besides the prayer in para 16.

15. In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras.

15.1 Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.

15.2 The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from

one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

15.3 In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

15.4 The issue regarding specific admission and denial of the pleadings was considered by this Court in **Badat and Co. Bombay Vs. East India Trading Co**[7]. While referring to Order VIII Rules 3 to 5 of the CPC it was opined that the aforesaid Rules formed an integrated Code

[7] AIR 1964 SC 538.

dealing with the manner in which the pleadings are to be dealt with. Relevant parts of para '11' thereof are extracted below:

> "11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written-statement, the particulars to be contained therein and the manner of doing so;
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> XXX XXX XXX
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> These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary."

15.5 The matter was further considered by this Court in **Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar**[8] after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below:

> "14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.
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> 15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted."

[8] (1993) 4 SCC 6.

15.6 We have made the aforesaid observations as regularly this Court is faced with the situation where there are no specific para-wise reply given in the written statement/counter affidavit filed by the defendant(s)/respondent(s). In our opinion, if the aforesaid correction is made, it may streamline the working.

16. For the reasons mentioned above, we do not find any merit in the present appeal. The same is, accordingly, dismissed.

.....J.
(C.T. RAVIKUMAR)

.....J.
(RAJESH BINDAL)

New Delhi
March 04, 2024.