Surendran Vs Ravisankar

Court: High Court Of Kerala

Date of Decision: Dec. 3, 2013

Hon'ble Judges: N.K. Balakrishnan, J

Bench: Single Bench

Advocate: Latheesh Sebastian, for the Appellant; K.C. Eldho and Sri. Jijo Thomas, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Balakrishnan, J.
Defendants 2 to 6 in a suit for partition are the appellants. A preliminary decree was passed by the trial court

directing division of the plaint schedule property into two equal shares and to allot one such share to the plaintiff. According to the plaintiff, he and

the first defendant who are the children of late Kesavan alone are entitled to get share in the property. They had a brother by name Ramadas, who

died on 20.11.2006. It was contended by the plaintiff that Ramadas mentioned above was having mental ailments incapable of knowing the nature

of acts he was doing. He had no permanent residence. At the time of death he was aged 68 years. As per Ext.A3 partition deed of 1969 the plaint

schedule property measuring 1 Acre 82 cents comprised in Survey No. 1489 and 1422 was allotted to the share of Ramadas mentioned above.

As per the deed his brother Sukumaran was appointed as the guardian to look after his property. According to the plaintiff, the defendant took

control of the mentally ill person Ramadas. After the death of Sukumaran and till the death of Ramadas he was residing with the defendants.

Because of the mental disability Ramadas was incapable of executing any document out of his free will and volition. On the death of Ramadas his

right over the property devolved upon the plaintiff and the first defendant, it is contended by the plaintiff. The defendants resisted the suit

contending that the deceased Ramadas had executed a registered Will bearing No. 79/96 and thus, the plaint schedule property devolved upon

defendants 2 and 3 and thus, defendants 2 and 3 are in possession of the property. Thus, it was contended that the plaint schedule property was

not available for partition.

2. Before the trial court, PW1 was examined and Exts. A1 to A7 were marked. DW1 to DW3 were examined and Exts. B1 to B4 were marked.

The trial court found that Ext. B1 Will was not proved to be a genuine Will executed by Ramadas. The fact that Ramadas was having mental

disability was pointed out as a reason to hold that Ext. B1 is not true. The evidence given by DW1 and DW3 was found unacceptable and so, the

courts below were not inclined to accept their evidence to prove due execution and attestation of Ext. B1 Will. Thus, the contention raised by the

defendants that the suit property is not partible was found against. The lower appellate court had a re-appreciation of the evidence and found that

there is no acceptable evidence to hold that Ext.B1 is true.

3. Learned Senior Counsel Sri. N. Sukumaran has argued at length pointing out that the courts below did not appreciate the evidence correctly.

The evidence would show that even though Ramadas was an idiot by birth, his idiocy could be subsequently cured and so, at the time of execution

of the Will, he was in a sound and disposing state of mind and as such, the finding entered by the courts below that Ramadas was mentally

incapable of executing a document is unsustainable. Whether Ramadas was an idiot or a mentally unsound person cannot have that much

importance since it can be very well found that Ramadas was not having sound and disposing state of mind so as to execute Ext.B1 Will. The

contention that subsequently the incapacity could be cured or got over remained unsubstantiated. Since it was the admitted fact that Ramadas was

not in a position to manage the property by himself because of the mental incapacity, even as per the partition deed of 1969 his brother Sukumaran

was appointed to manage his property. So much so, there can be no doubt that Ramdas was a man of non compos mentis. If as a matter of fact

the mental illness or other disability could be cured by medication then certainly there would have been medical records to prove that fact. If

actually Ramadas was an idiot by birth, it is incomprehensible, how it could be cured is another question that arises for consideration.

4. Ext. B4 was pressed into service to contend that Ramadas had executed a document in 1983. There is no acceptable evidence to show that

Ramadas had in fact executed that document. What was produced before court was only a photocopy of that document.

5. The crucial question for consideration is whether there is legal evidence to prove the due execution and attestation of Ext.B1 Will. The courts

below have highlighted the improbabilising factors or inconsistency in the evidence regarding execution and attestation. DW1 is the Scribe who was

stated to have prepared Ext.B1. His statement is that deceased Ramadas had put his signature in Ext.B1 after reading and understanding its

contents. That itself would show the total incredibility of that witness. Besides being idiot or a mentally challenged person, deceased Ramadas was

illiterate. If so, how could he read and understand the contents of the document. Though it was stated by DW1 that Ext.B1 was executed in the

house of deceased, DW3 states that it was executed in the house of his sister namely; the first defendant. The difference in the signatures put in the

first page and the last page purporting to be of the deceased is also so eloquent that it could not have been signed by the deceased. It was also

pointed out that the evidence given by DW3 would show that she and the first defendant had signed in eight pages of the Will but their signatures

appear only in two pages. Therefore, it would appear that they were only giving tutored or distorted versions. It is important to note that the

evidence regarding execution and attestation given by the witnesses to prove the Will was scanned by the courts below and found that their

evidence was totally unworthy of credence. There is no legal infirmity in the finding so entered by the courts below. There are towering

circumstances which would improbabilise the case advanced by the appellant.

No substantial question of law arises for consideration in this RSA. It is hence, dismissed.