
Mathangi Devasahayam Vs Jetty Manikyamma

Civil Revision Petition No. 4481 of 2012

Court: Andhra Pradesh High Court

Date of Decision: June 12, 2014

Acts Referred:

Evidence Act, 1872 & Section 45, 68, 69

Citation: (2014) 5 ALD 741 : (2014) 6 ALT 81

Hon'ble Judges: L.N. Reddy, J

Bench: Single Bench

Advocate: Venkateswarlu Posani, Advocate for the Appellant

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The respondents filed O.S No. 709 of 2010 in the Court of the Principal Senior Civil Judge, Guntur, against the

petitioner for partition and separate possession of the suit schedule property. The basis for the suit is a Will, dated 10.02.2010 (Ex. A-6), said to

have been executed by the mother of the petitioner and the respondents. The plea of the petitioner was that the property was purchased by him

and since he happened to be a Government Employee, the sale deed was obtained in the name of his mother and that she did not have any right to

execute a will. It was also pleaded that the signature on the alleged will is not that of his mother, and is a forged one.

2. The trial of the suit commenced and P.Ws. 1, 2 and 3 were examined. At that stage, the petitioner filed I.A. No. 2436 of 2011 u/s 45 of the

Evidence Act (for short "the Act") with a prayer to send the alleged will, dated 10.02.2010, to the Forensic Science Laboratory, Hyderabad, for

examination as to the genuinity of the signature. The application was resisted by the respondents. The trial court dismissed the I.A. through order,

dated 04.07.2012, taking the view that once P.Ws. 1 and 2, the attestors of the will, were examined to prove the execution and that there is no

necessity to send the document for opinion of an expert about the genuinity of the signature of the executant. The said order is challenged in this

revision.

3. Sri Venkateswaralu Posani, learned counsel for the petitioner, submits that Section 68 of the Act, no doubt, stipulates a different procedure for

proof of documents, which are required to be attested, but the same does not prevent a party who doubts the execution of the document, from

seeking opinion of the expert. Placing reliance upon the judgment of a Division Bench of the Kerala High Court in Mrs. Sumangala T. Pai Vs. S.

Sundaresa Pai and Others, learned counsel submits that the view taken by the trial Court cannot be sustained in law.

4. Though the respondents are served with notice, they have not chosen to enter appearance.

5. The basis for the respondents for filing the suit for partition is a will, said to have been executed by their mother. The sole defendant in the suit

i.e. the petitioner herein contested it, by raising several contentions including the one as to the forgery of the alleged will. He filed an application to

send the said will, to the Forensic Science Laboratory, apart from cross-examining P.Ws. 1 and 2, who are said to be the attestors to the said will.

The trial Court expressed the following view while dismissing the petition:

As rightly pointed out by the learned counsel for the plaintiff the parties are bound to follow the procedure u/s 68 or 69 of the Evidence Act as the

case may be and only in the absence of any such evidence available they can seek other mode of proof. The evidence of an expert u/s 45 is not

contemplated in proof of a will. Even otherwise the evidence of an expert is only in the aid of other evidence but it cannot be sought to supplant the

evidence otherwise legally admissible. Therefore, since the respondents have already examined the available witnesses in proof of the will it is for the

court to decide on such evidence whether the will is proved or not proved. The petitioner cannot be permitted to disprove the execution of the will

by evidence of an expert.

6. It appears that the trial Court is under the impression that examination of attestors as witnesses in respect of a document, which is required to be

attested, would obviate the necessity of seeking the expert's opinion in relation to such document. It needs to be observed that the proof of a

document can be in different ways depending upon the nature of the plea taken by the persons, who are relying upon it on the one hand, and those

who are disputing it, on the other. Section 68 of the Act, no doubt, prescribes a separate procedure to be followed in the context of proof of

documents, which are required to be attested, such proof is, however, over and above what is otherwise required in law.

7. The examination of attestors would only bring about compliance with the requirement u/s 68 of the Act. Beyond that, it does not add finality to

the genuinity of a will. In a given case, if a person who is opposing a will, is able to establish that the signature contained in it is not that of the

executant or that executant is not the person named in the will, the mere fact that two attestors have consistently spoken about the execution, does

not make any difference. In certain cases, it may so happen that the attestors may genuinely believe the executant to be a person of a particular

description and it if emerges that the one who executed the document is not the concerned person, the attestation even if it accords with Section 68

of the Act does not take the matter, any further, in the context of proof. The Kerala High Court observed as follows:

Thus, it can be seen that proof of the signature of the testator in a Will is a vital matter which requires to be proved. It is true that the evidence

insisted by law is that of the attestors. But that is not to say that other kinds of evidence is shut out by law. If there is anything suspicious in the

signature, evidence of an attessor who attests the signature can certainly be corroborated or contradicted by expert opinion.

This is in total agreement of the same.

8. Therefore, the Civil Revision Petition is allowed and the order under revision is set aside. I.A. No. 2436 of 2011 is allowed and the trial Court is

directed to send Will, dated 10.02.2010 (Ex. A-6) along with the document containing the undisputed signatures of the executant of the said

document to the Forensic Science Laboratory, Hyderabad for comparison, at costs of the petitioner. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.