

Gannamaneedi Madhavayya and another - - - - Appellants

v.

Gannamaneedi Achamma (since deceased) and another- - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL DELIVERED THE 21ST FEBRUARY, 1949

Present at the Hearing :

LORD MACDERMOTT

LORD REID

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by SIR MADHAVAN NAIR*]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated 27th November, 1944, which reversed a judgment and decree of the Court of the Subordinate Judge of Narsapur dated 27th October, 1942.

The appeal arises out of a suit (O.S. 38 of 1941) instituted by the appellants for a declaration that a will dated 11th March, 1939, alleged to have been executed by their stepbrother one Ramalingayya, the husband of the respondent Achamma (since deceased), is not genuine. Ramalingayya died on 12th March, 1939.

The appellants also brought another suit (O.S. 25 of 1940) against Achamma, under section 77 of the Indian Registration Act, for a decree directing registration of a settlement deed dated 10th March, 1939, said to have been executed in their favour by the aforesaid Ramalingayya.

Both suits were tried and disposed of together by the Trial Court. The Subordinate Judge held that both the settlement deed and the will were not genuine documents. He therefore dismissed O.S. 25 of 1940 relating to the settlement deed, and decreed O.S. 38 of 1941 relating to the will, declaring that the will is not a genuine document.

The appellants appealed against the decree dismissing O.S. 25 of 1940, and the respondent, the widow of Ramalingayya, appealed against the decree in O.S. 38 of 1941.

Both appeals were heard together by the High Court. The learned Judges dismissed the appeal preferred by the appellants, agreeing with the Subordinate Judge that the settlement deed was not genuine; and allowed the appeal preferred by the widow, holding—differing from the Subordinate Judge—that the alleged will was proved to have been executed by the deceased. They stated “we have come to the conclusion that the former (settlement deed) is not genuine, while the latter (the will) may be accepted as having been duly executed by the deceased.”

The appellants applied for special leave to appeal to His Majesty in Council in the settlement deed suit but the petition was dismissed.

The present appeal, as stated before, relates to the alleged will. The widow Achamma (respondent) having died since the filing of the appeal, her adopted son, then a minor, was brought on record as her representative. He has now become a major and is the respondent before the Board.

The only question for determination in the appeal is whether the will referred to above is genuine or not.

One Padmanabhudu died in 1935. He was twice married. Ramalingayya the executant of the will was his son by his first wife; the appellants are his sons by his second wife. Soon after their father's death Ramalingayya and the appellants partitioned their joint family properties. The appellants are the immediate reversioners to the estate of the deceased Ramalingayya.

It is common case that Ramalingayya was in poor health and suffered from tuberculosis and diabetes. In 1938 he became ill. He spent some months in a sanatorium at Rajahmundry. On 5th April, 1938, before going to the sanatorium, he executed a registered will by which he gave absolutely to his wife 9 acres and 98 cents of land. He gave her also a restricted power of adoption and provided that if no adoption took place, or if the adoption did not stand, the rest of the property should go to the Andhra university. While he was in the sanatorium he executed on 26th August, 1938, a registered document cancelling the will. He gave no reasons for cancelling it but his widow says it was cancelled because of her desire that he should give her unrestricted powers of adoption. In October, 1938, Ramalingayya left the sanatorium and for some time lived in a village nearby. Then he went to his father-in-law's village. During this time his wife was living with him. It appears that in January or February, 1939, he visited his village Rayakuduru for one day. Some time after, he again went to his village where he registered a sale deed on 7th March. By this time his wife had been sent to Vizagapatam for treatment as she had not been well. She returned only two or three days after his death. On 8th March, Ramalingayya fell seriously ill and died on 12th March, 1939, at about 11 p.m. These facts are not disputed.

The main dispute between the parties relates to what actually happened after Ramalingayya fell ill on 8th March, 1939. The version given by the appellants has been totally disbelieved by the Courts in India. The appellants said that in January or February Ramalingayya expressed a desire to settle property on them, that a draft—not produced in evidence—was brought into being, that nothing was done about it, that when the deceased realised that he was on the point of death he wished again to settle the property on them and that on the 10th March a settlement deed was duly executed. By this deed he gave them absolutely 37 acres, 11 cents out of the 60 acres of land of which he was in possession. These were the best lands Ramalingayya had. They said that the deceased moved comparatively freely about the house and spent most of his time in their "*chavadi*", and that he was attended during the last days of his illness exclusively by P.W.7, a doctor whom they had summoned from an adjoining village.

After examining the evidence, the Subordinate Judge stated as follows his opinion as regards the alleged execution of the deed:—

"The probabilities are that after he (Ramalingayya) had the attack on the night of the 8th, he was confined to his bed as spoken to by the defendant's witnesses and that he was attended on only by D.W.1 (Dr. Narayana) and not by P.W.7. I therefore disbelieve the evidence of P.W.1, P.W.7, and P.Ws. 2, 3, 4 and 5, who say that Ramalingayya was moving about and spending the day-time from the 9th to the 12th in plaintiffs' '*chavadi*' and believe the evidence of D.Ws. 1, 2, 4, and 6, who state that D.W.1 alone was attending on Ramalingayya and not P.W.7 and that he was confined to his bed in his own room. In this view the case of the plaintiffs that Ramalingayya was in plaintiffs' '*chavadi*' on the afternoon of 10th March, 1939, that exhibit P.1 (settlement deed) was written there and that Ramalingayya executed it cannot possibly be true".

In appeal, the learned Judges of the High Court stated that "we agree therefore with the learned Judge that the deed was not a genuine document and in all probability was brought into existence subsequent to the death of Ramalingayya".

The case of the respondent as regards the execution of the will is as follows. The settlement deed referred to was never executed by the deceased. When Ramalingayya fell seriously ill at his house on 8th March, 1939, their doctor Narayana (D.W.1) was sent for. He saw Ramalingayya on 8th March, and also on 9th. On 10th March Ramalingayya told his doctor in the presence of his cousin and others that he wanted to make a will. On the morning of 11th March he asked Seshayya (D.W.2) to prepare a draft of his will. D.W.2 is the same scribe who had drawn up the previous will. The draft of the new will which he prepared was based on the draft already made by him. The draft was ready by about 1 p.m. This was approved by Ramalingayya and a fair copy of the will was made and was ready by about 4 p.m. At about this time Dr. Narayana (D.W.1) paid his professional visit. Ramalingayya was lying on a cot in his room. Having decided that the will should be executed he asked the doctor to stay and attest the will. The doctor agreed. The will was also attested by G. Madhavarayudu, C. Ramamurti (D.W.4), C. Satyanarayanamurti (referred to in these proceedings as Dr. Narayana, D.W.1), T. Someswararao (D.W.6), K. Somayya (D.W.3) and by D. Seshayya, the writer (D.W.2). Ramalingayya signed the will in the presence of the above persons. 11th March was a Saturday. The deceased collapsed and died on the Sunday following, and that was given as the reason why the will was not registered. It is admitted by both sides that at all material times Ramalingayya was of sound mind.

The exact terms of the will are as follows:—

"Will executed on 11th March, 1939, by Ramalingayya son of late Gannamaneedi Padmanabhudu, Kamma, inamdar, resident of Rayakuduru, Bhimavaram taluk, West Godavari District. I am suffering from tuberculosis since some time past. There was some improvement previously but it has again become worse of late. Apprehending that I will not live long I have by means of this will set forth the provisions that should come into effect after my death in respect of my property. I had executed a will on 5th April, 1938, and got it registered on 7th April, 1938. I cancelled the said will on 26th August, 1938. This will has been executed containing the provisions which I considered necessary.

1. I give authority to my wife by means of this will, to adopt, till the adoption stands any boy she likes, provided I do not adopt during my lifetime.

2. My wife shall after my death pay Rs.500 out of my movable properties, to the Tuberculosis Relief Sanatorium, Rajahmundry.

3. My wife shall enjoy with absolute rights of gift and sale all my movable properties, all outstandings due from people, the postal Savings bank deposit amounts, and the inam dry and wet lands viz. . . .

4. If my wife should not adopt during her lifetime, or if such, adopted son or sons should predecease her without having become majors, all my immovable property shall go with absolute rights to the Andhra University. They should spend the income got therefrom by the grant of scholarships to medical students for research in tuberculosis. I have executed this will with good understanding and consciousness, and with wholehearted consent. Power has been reserved to cancel or alter it during my lifetime.

(Signed) Gannamaneedi Ramalingayya.

Witnesses hereof.

(Signed) Gannamaneedi Madhavarayudu,
Chengalvala Ramamurti,
Chengalvala Satyanarayanamurti,
Thulloori Someswararao,
Kodati Somayya,
Devireddi Seshayya, writer."

After the will was executed it was given to the custody of the first attester Madhavarayudu. The respondent was absent in Vizagapatam when her husband died. When she returned about three days after the death of her husband, the will was given to her by her grandfather to whom Madhavarayudu had given it about 15 days after her husband's death. The will was never presented for registration.

After the death of her husband the respondent entered into possession of his properties.

What happened after the death of Ramalingayya may now be briefly noticed. The appellants presented the deed of settlement for registration on 4th April, 1939. In a statement made on 18th April, 1939, before the Sub-Registrar, in answer to the summons issued to her, the respondent stated that the deed of settlement was a forgery and that her husband had left a will. The registration of the settlement deed was refused on 28th April, 1940. In the course of proceedings before the Registrar the first attester to the will, Madhavarayudu, who died before he could give evidence in the present case, stated that he (Ramalingayya) "wrote will on the 11th which is not registered. We wanted to get the document registered on Monday. He had no intention of applying for private attendance."

In the course of proceedings under section 145 of the Code of Criminal Procedure the respondent stated before the Sub-Divisional Magistrate, conducting the inquiry, that her husband had made a will and that a copy of the will had been filed in Court, and she would produce the original when required. The original was subsequently filed on 20th July, 1939. In the course of these proceedings Doctor Narayana also made a statement that Ramalingayya had died executing a will and that he attested it as a witness.

The case of the appellants as regards the will is that it is a forged one, that in the village of Rayakuduru there are two rival factions called the village munsiff's party, and the Karnam's party, that they belonged to the village munsiff's party, that the will was brought into existence by the efforts of their cousins (deceased Ramalingayya's brother's sons) Madhavarayudu and Lakshmayya, and their followers the attestors—all of whom belonged to the Karnam's party, with a view to deprive them of the suit property, actuated by factional animosity.

In view of the findings it cannot be now disputed that Ramalingayya died on 12th March, on account of a serious attack of illness which he had on 8th, that he was confined to his room and that in his illness he was attended only by Dr. Narayana (D.W.1). In support of her case, Achamma produced the unregistered will bearing her husband's alleged signature. There are six attestors to the will, all of whom barring Madhavarayudu, the first attester (who was dead), gave evidence in support of its genuineness. The second attester (D.W.4) C. Ramamurti is the Karnam of the village. He is a stepbrother of Dr. Narayana the third attester. The fourth attester is T. Someswararao (D.W.6) a natural brother of Madhavarayudu who had been adopted into a family in another village. The fifth attester (D.W.3) is one Somayya, stated to have been a Gumastah of the first attester. The sixth and last attester (D.W.2) is the writer of the will. An agreement written by him in some other connection was found to be a forgery.

From the evidence it would appear that in the village of Rayakuduru there are two parties, viz., "the village munsiffs" party and the Karnam's party. Whether the deceased Ramalingayya was a member of one or other of the factions is not clear (see the High Court's Judgment); but the Subordinate Judge in the course of his judgment says that he belonged to the Karnam's faction. However it may be, it is clear that all the attestors belong to the Karnam's party. Dr. Narayana is an important member of the party. As stated before the Karnam is his stepbrother. Dr. Narayana has been a registered medical practitioner for the "last 15 years." He conducted an election which led to an election petition before the District Munsiff. He was removed from membership of the local

Parchayat board for his misconduct. What this alleged misconduct was, is not mentioned in the evidence. The removal happened in 1928 or so.

The evidence of all the above witnesses is that the will was written on the evening of 11th March by Seshayya (D.W.2), it was read over to the deceased who executed it and thereupon they attested it. The rest of their evidence supports the other details of the respondents' case. Achamma gave evidence as D.W.5. She stated that she came to Rayakuduru three days after her husband's death, that her grandfather gave her the will which had been given to him 15 days after her husband's death. She said that she asked her grandfather to present it for registration, but he said that the registration inquiry regarding the settlement deed was proceeding and it need not now be presented for registration.

Before proceeding further, it is necessary to call attention to one particular item of evidence called the "Powthi report" (Ex. D.32) which was very much relied on by the appellants in support of their case. This report is an official statement which the village officials have to send to the taluk office at the end of every month showing the names of the deceased "pattadars" and the individuals in whose names the pattas have to be issued. On 27th March, 1939, a Powthi report was sent to the taluk office. The Karnam (D.W.4) wrote the original and his assistant prepared the copy. The Karnam and the village munsiff signed both documents. Achamma was described in the report as the heir of the deceased. At that time, admittedly, no reference was made in it to the will alleged to have been executed by Ramalingayya. Before the report was despatched to the office the Karnam added a "shara" (a note) Ex. D.32 (a), in column 4 that the deceased had executed a will on 11th March, 1939. In his evidence the Karnam said "I at first failed to note in the Powthi report that Ramalingayya had executed a will. One or two hours later I noted that fact in the report. The V.M. had gone home by then. I sent the report to the V.M. for his initials. I do not know what happened subsequently." The V.M. said that the report was not sent to him after the insertion of the "shara." The Karnam was suspended for one month by the Tashildar as a result of the inquiry which he made about this irregularity. In his statement before the Tashildar the Karnam said: ". . . Somebody asked whether I had mentioned about the will in the Powthi account at the time of submitting the cover and I accordingly wrote it in the account. . ."

The evidence makes it clear that Ex. D.32 (a) was not written in the presence of the village munsiff and that it was inserted later. From this document the Subordinate Judge drew the inference that "it is probable that the will was brought into existence only after the date of Ex. D.32 (27th March, 1939)." Mr. Rewcastle, the learned Counsel for the appellants, does not go so far but he states emphatically that this feature is a strong circumstance which shows that the will cannot be genuine and must have come into existence at a later date.

The Subordinate Judge held that the "will is not a genuine document" for the following amongst other grounds:—On comparing the disputed signature with the genuine signature of Ramalingayya the Subordinate Judge did not find "that natural flow in the writing which we find in the genuine signatures". He said "it looks as if an attempt has been made to imitate the signature of Ramalingayya, but without success". He did not rely on the evidence of any of the attesting witnesses as they and the writer, "all belonged to the same party". He specially referred to the Karnam as an unreliable witness, obviously because of his interference with the Powthi report to which attention has already been drawn. In view of the provisions of the will, the Subordinate Judge said that it was not a simple document and observed that all the property had not been left to the widow, implying that this was somewhat unnatural.

One very important suspicious circumstance that influenced the Subordinate Judge's opinion about the will was that he was not satisfied with the reasons given by the respondent's witnesses for not getting it

registered. To quote his own words “. . . . Though Ramalingayya died more than 24 hours after the alleged execution of the will, no attempt was made to have it registered, though the prior will, Exhibit D-21, as well as its cancellation, Exhibit D-1, were both registered. Though the defendants’ witnesses say that it was not expected that Ramalingayya would collapse so soon and that they thought that the will may be registered the next Monday, the fact that he was seriously ill cannot be disputed. It is impossible, therefore, to believe that registration of the will was postponed for no valid reason”.

In the concluding portion of his Judgment the Subordinate Judge detailed as follows many of the suspicious circumstances which made him hold that the will is not a genuine document. “The facts that Exhibit D-28 was not registered, that the existence of the will was not brought to the notice of the defendant for 8 days after his death, that she was given the document only 15 days later, and that it was actually put into a public office only in July, 1939, after the plaintiffs had set up Exhibit P-1, throw considerable suspicion on its genuineness”.

In appeal, the learned Judges of the High Court thought that the criticisms of the will made by the Subordinate Judge did “not affect the general probabilities of the case”. After meeting the main points raised by the Subordinate Judge they concluded that the will was genuine, because it apparently carried out the desires of the testator as shown by his previous will, the additions made to it being quite natural in the circumstances; and it was too much to believe that the attestors and the writer would have combined to bring a false will into existence simply on account of factional animosity. They thought the will was entirely consistent with the conduct of the deceased during the last year of his life.

Their Lordships find no reason to differ from the view of the High Court that the will may be accepted as having been duly executed by the deceased. No expert evidence has been adduced to prove the genuineness of the handwriting. It was said that the Subordinate Judge knew the Telugu language in which the deceased signed his name and his opinion should be preferred to that of the learned Judges of the High Court. But the Subordinate Judge has only said that there is no natural flow in the writing: he has not examined the ‘make up’ of the deceased’s signature in the light of his own knowledge of the language and its characters. The learned Judges of the High Court after carefully examining the signature found no reason to reject it. Their Lordships have also examined the disputed and the accepted signatures of the deceased. The letters forming the disputed signature appear to have been written somewhat slowly and there are small breaks between them. But these can well be explained by the state of the deceased’s health at the time. He was a dying man and his hand could not have remained steady while writing. After carefully examining the various signatures, their Lordships are not satisfied that the disputed signature does not look like the accepted signatures of the deceased.

The Subordinate Judge has not accepted the testimony of the defendants’ witnesses as regards the execution of the will, but not because of internal inconsistencies or contradictions in their evidence or on account of their unsatisfactory demeanour while in the witness box. He seems to have rejected their testimony mainly because of the fact that all of them belonged to the Karnam’s party, but there is no evidence regarding the intensity of the bitterness of the party feelings. The Subordinate Judge was not impressed with the evidence of the Karnam because of the later insertion by him of the “shara” in the Powthi report. This is no doubt true but as pointed out by the learned Judges of the High Court this is not a sufficient reason for rejecting the evidence of the Karnam or for agreeing with the learned Judge that the writing of the “shara” shows that the will must have come into existence only at a later date. In this connection their Lordships must not fail to point out—what has been pointed out by the High Court—that the learned Judge is not inclined to believe the evidence of Dr. Narayana “whose evidence he had accepted in its

entirety with regard to the condition of the deceased in the settlement suit". Their Lordships agree with the High Court in thinking that there is no reason why his evidence should not be believed. No doubt he belongs to the Karnam's party but he had been the deceased's family doctor and his own medical attendant for many years. He had attested the earlier will and now swears to the due execution and attestation of the will in question. Their Lordships see no reason to disregard the evidence of this witness or of the other witness regarding the execution or attestation of the will.

Their Lordships are not impressed with the argument that the non-registration of the will has not been sufficiently explained. It is true that Ramalingayya remained alive for about 24 hours after the execution of the will. The answer of the respondent to the charge is that Ramalingayya was very ill, he could not be taken to the Registrar's office, the next day was a Sunday and it was intended to get the will registered on the Monday, but he collapsed and died on the Sunday. Their Lordships cannot in the circumstances draw an inference adverse to the respondent because of the omission to register the will. Further, it must also be remembered that a will did not require registration to make it valid.

Their Lordships are also not prepared to draw an inference adverse to the respondent, because the will was produced only in July, 1939. The Subordinate Judge failed to note that it was put forward by the defendant at the earliest possible moment when her title was impeached by the production and attempted registration of the alleged settlement deed. In the statement which the defendant made on the 18th April, 1939, to the sub-registrar the will was mentioned, although the date was omitted.

Considering the case as a whole, their Lordships agree with the High Court that the "probabilities" show that the will is genuine. The testator was a man of feeble health. He would naturally desire to execute a will leaving his property to his wife. There is nothing in the evidence to show that he was not fond of her. The evidence shows that he executed a will on 5th April, 1938, though he cancelled it later. The terms are similar to the terms of the previous will. The deceased made the same disposition of land in favour of the respondent, but he gave her now unrestricted powers of adoption. He made the same alternative bequest to the Andhra University as before, adding to it a donation in favour of the sanatorium at Rajahmundry where he had lived for some time. By the will, the testator did not even increase the property given to his wife which remained the same. It may also be mentioned that the will was drawn up by the same scribe who had drawn up the previous one, and the attestors include four of those who attested the previous will.

For the above reasons, the appellants have not been able to satisfy their Lordships that the conclusion reached by the High Court that the will is genuine is wrong. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. The appellants must pay the respondent's costs.

In the Privy Council

GANNAMANEEDI MADHAVAYYA
AND ANOTHER

v.

GANNAMANEEDI ACHAMMA
(since deceased)
AND ANOTHER

[DELIVERED BY SIR MADHAVAN NAIR]