Supreme Court of India
Ppk Gopalan Nambiar vs Ppk Balakrishnan Nambiar And Ors on 7 March, 1995
Bench: K. Ramaswamy, B.L. Hansar1A

CASE NO.:
Appeal (civil) 1368 of 1978

PETITIONER:
PPK GOPALAN NAMBIAR

RESPONDENT:
PPK BALAKRISHNAN NAMBIAR AND ORS.

DATE OF JUDGMENT: 07/03/1995

BENCH:
K. RAMASWAMY & B.L. HANSAR1A

JUDGMENT:

JUDGMENT 1995(2) SCR 585 The following Order of the Court was delivered :

The appellant is the first defendant is Suit OS No. 199/68 on the file of the court of District Munsif, Payyoli. The trial court decreed the suit. On appeal, the decree, to the extent of the property covered under Ex.B-12 a will dated 1.11.55 executed by Lakshmi Amma, the mother of the appellant, was not upheld and the said properties were ordered to stand excluded from partition. On second appeal, the High Court reversed the decree of the appellate court in that behalf and confirmed the decree of the trial court in Second Appeal Nos. 753/75 and 977/75 dated 23.11.77. Thus this appeal by special leave.

Sri Nambiar, learned counsel for respondent, contended that respondent Nos. 2, 4 and 11 have since expired and their legal representatives having not been substituted, the appeal stood abated. We find no force. Admittedly, before their deaths, they sold their respective shares by registered sale deeds in favour of other respondents. So, by operation of Order 22 Rule 10 CPC, their respective interest devolved by transfer of the respondents who are already on record. Therefore, there is no need to bring the L.Rs. of the deceased on record or to transpose them as legal representatives.

The real question with which we are concerned in this appeal is with regard to the validity of the will Ex,B-12. Admittedly, Lakshmi Amma had her share under a maintenance arrangement, EX.A- 2 dated 17,12.41, under which Schedule-A property was given to her and two sons, namely, the appellant and one Kunjappan Nambiar, who predeceased his mother .Lakshmi Amma. In the written statement, the appellant had specifically propounded the registered will executed by his mother, Ex.B-12. The trial court, as pointed out by the High Court, saw some suspicious features. First, in normal circumstances mother would not have deprived the daughters on her demise to inherit her estate; and secondly, the will, though a registered one, suspicious features created in the case were not removed even by the evidence of DW-1 and 2, these being enormous benefit under the will and no proof of the signature, nor proper proof of thumb impression of DW-2.

On appeal, the sub-ordinate Judge has given various reasons to accept the validity of the will One of the reasons is that it is a registered wilt and the endorsement by the Registrar would show that the testator was in a sound disposing state of mind and that it was executed out of her free will and that, therefore, the discrepancy in the evidence of DW-2, an attestor does not vitiate the validity of the will. On appeal, the learned single Judge without going into the evidence, has stated in one sentence that he agrees with the reasoning of the trial court and does not agree with the reasoning of the appellate court. We are at a loss to appreciate the view taken by the learned judge. The High Court also stated that the whole of the estate given to the son under the will would itself generate suspicious circumstance. It is difficult to accept the reasoning of the learned judge. Admittedly, the will was executed and registered on 1.11.55 and she died 8 years thereafter in the year 1963. When the appellant had propounded the will in his written statement, nothing prevented either the respondent or any of the contesting defendants to file a rejoinder i.e. additional written statement with leave of the court under Order 8 Rule 9 pleading the invalidity of the will propounded by the appellant, Nothing has been stated in the pleadings. Even in the evidence when the appellant was examined as DW-1 and his attestator was as DW-2, nothing was stated with regard to the alleged pressure said to have been brought about by the appellant to execute the will. In the cross-examination by the first respondent, no attempt was even made to doubt the correctness of the will.

Under these circumstances, the suspicion excited the mind of the District Munsif is without any basis and he picked them from his hat without fact- foundation. The Sub-ordinate Judge had rightly considered all the circumstances and upheld the will. The High Court, without examining the evidence, by merely extracting legal position set out by various decisions of this court has upset the finding of the fact recorded by the Sub- ordinate Judge in one sentence. It is trite that it is the duty of the propounder of the will to prove the will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind.

The judgments of the High Court and District Munsif, therefore, stand set aside and that of the Sub-ordinate Judge stands confirmed. So, the properties covered under Ex.B-12 stand excluded from the partition.

The appeal is accordingly allowed, No costs.