

A

S. SANKARAN

v

D. KAUSALYA

FEBRUARY 15, 2007.

B

[S. B. SINHA AND MARKANDEY KATJU, JJ.]

C

Will—Validity of—Challenge to—Single Judge of High Court held the Will as genuine considering the various factors—Set aside by Division Bench—Correctness of—Held: Division Bench could have reversed the order of Single Judge but should have considered the various factors taken into account by the Single Judge—Thus, order not sustainable and set aside—Matter remitted back to Division Bench—Practice and Procedure.

D

The testator executed a Will in 1986 and appointed the appellant-eldest son of his younger daughter as executor of the Will. The Will was registered. Appellant filed for probate. Respondent-elder daughter of the testator contended that the testator had executed a Will in 1982 bequeathing property equally to both the daughters and as such the Will of 1986 was forged one. Single Judge of High Court taking into consideration the various factors held that the Will of 1986 was genuine. Division Bench of High Court set aside the order but without a proper consideration of the various facts and circumstances of the case. Hence the present appeal.

E

Allowing the appeal and remitting back the matter, the Court

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HELD: The Division Bench of High Court could have set aside the judgment of the Single Judge of High Court but it should have done so after considering *inter alia* the various factors which persuaded the Single Judge to decide in favour of the appellant. Since the Division Bench has not done so, the judgment of the Division Bench cannot be sustained and is set aside. The matter is remanded to the Division Bench for a fresh decision. [Para 9]

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[736-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5145 of 2003.

From the Judgment and Order dated 14.2.2002 of the High Court of Judicature at Madras in OSA No. 275/1999.

H

R. Sundaravaradan, R.N. Keshwani and Ramlal Roy for the Appellant. A
K. Sharda Devi for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the B
impugned judgment of the Madras High Court dated 14.2.2002 in O.S.A. No. 275 of 1999.

2. Heard learned counsel for the parties and perused the record.

3. The case of the appellant is that the testator Singaravelu Nayagar C
executed a will on 24.9.1986 registered as Document no.66 of 1986 on the file of the Sub Registrar, Purasavakkam. The testator had two daughters viz. Kausalya, the respondent herein (who is the elder daughter) and one Saraswathi. The appellant is the eldest son of the said Saraswathi. Apart from the appellant the said Saraswathi has two more sons viz. Gopi and Manohar. D
The testator appointed the appellant as executor under the suit will and as such he alleged that is entitled to get the probate.

4. The respondent filed a written statement contending that the will E
dated 24.9.1986 alleged to have been executed by Singaravelu Nayagar is a forged one and that the testator had executed a will dated 4.11.1982, much earlier to the execution of the will dated 24.9.1986 where under he bequeathed the property at No.16, Manicka Naicken Street, Purasavakkam, Madras, giving equal share to both the daughters.

5. The question involved in this case is a short one i.e. whether the will F
dated 24.9.1986 executed by Singaravelu Nayagar was a valid one.

6. A learned Single Judge of the High Court by his judgment dated G
25.5.1996 held that the will dated 24.9.1986 was genuine and was not a forged one. The learned Single Judge took into consideration various factors e.g. that the testator himself presented the will for execution, and there was a dispute between the testator and his elder daughter and hence he wanted to bequeath his properties to his second daughter and the sons born to her, etc..

7. In appeal the Division Bench of the Madras High Court set aside the H
judgment of the learned Single Judge but without a proper consideration of the various facts and circumstances of the case mentioned by the learned Single Judge in his very elaborate judgment.

A 8. The Division Bench was evidently influenced by the fact that the elder daughter was deprived of her share in her father's property. However, the Division Bench has not taken into consideration the various considerations which according to learned Single Judge motivated the testator to deprive his elder daughter, the respondent herein.

B 9. No doubt the Division Bench could have reversed the judgment of the learned Single Judge but it should have done so after considering *inter alia* the various factors which persuaded the learned Single Judge to decide in favour of the appellant herein. Since the Division Bench has not done so we are of the opinion that the judgment of the Division Bench cannot be sustained and it is hereby set aside. The matter is remanded to the Division Bench for a fresh decision after considering *inter alia* the various facts and circumstances of the case referred to by the learned Single Judge and also the evidence and the various case law on the point.

C

D 10. The Division Bench may consider the desirability of an early disposal of the case since it is pending for a long time. The appeal is allowed. No order as to costs.

N.J.

Appeal allowed.