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B.N. FIROS

v.

STATE OF KERALA & ORS.

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(Civil Appeal No. 79 of 2008)

MARCH 27, 2018

**[RANJAN GOGOI AND
MOHAN M. SHANTANAGOUDAR, JJ.]**

C *Information Technology Act, 2000 – s. 70(1) – Protected system – Issuance of Notification dated 27th December, 2002 u/s.70(1) – Declaration that the computer, computer system and computer network specified in the Schedule to the Notification to be “protected systems” – Challenge to, by the appellant on the ground that copyright in the e-governance programme developed by them for the Government vested in the appellant u/s. 17 of the 1957 Act and the Notification was an infringement of the said right*

D *– Case of the State that the appellant developed the software for Microsoft which had undertaken to make available the same to the State through 4th respondent-government agency, free of cost – High Court held that the Intellectual Property Rights in the software vested*

E *in the Government so as to entitle it to declare the same as a protected system u/s. 70(1) – Interference with – Held: Not called for – The power of declaration of a “protected system” may invade a copyright which may be vested in a private owner – However, such a situation is taken care of by the provisions contained in s.*

F *2(k) of the 1957 Act which defines “Government work” and s.17(d) of the 1957 Act which vests in the Government, copyright in a government work as defined by s. 2(k) – Provisions of s.70(1) has to be read conjointly with s. 2(k) and s. 17 of the 1957 Act, in order to give due effect to the related provisions of two different enactments made by the legislature – Furthermore, appellant admitted/pleaded*

G *that it was entrusted by Microsoft to develop the software for which it received due consideration from Microsoft, if that be so, appellant would not be entitled to claim copyright in the application software u/s.17(a) of the 1957 Act – Copyright Act, 1957 – ss. 17(a), 2(k).*

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Dismissing the appeal, the Court

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HELD : 1.1 The High Court in the impugned order has correctly, held that the provisions of Section 70(1) of the Information Technology Act, 2000 has to be read conjointly with Section 2(k) and Section 17 of the Copyright Act, 1957 in order to give due effect to the related provisions of two different enactments made by the legislature. Section 70(1) of the I.T. Act as in force at the relevant point of time (at the time when the matter was under consideration in the High Court) or even after its amendment in 2009 bars access to a person to the system declared as a “protected system” without authorization from the Appropriate Government. Plainly read, the power of declaration of a “protected system” may invade a copyright which may be vested in a private owner. However, such a situation is taken care of by the provisions contained in Section 2(k) of the Copyright Act, 1957 which defines “Government work” and Section 17(d) of the copyright Act, 1957 which vests in the Government, copyright in a government work as defined by Section 2(k). The balance is struck by Section 17 between copyright pertaining to any other person and copyright vested in the Government in a “government work”. Section 70 of the I.T. Act, therefore, cannot be construed independent of the provisions of the Copyright Act; if Section 70 of the I.T. Act has to be read in conjunction with Section 2(k) and Section 17 of the Copyright Act 1957 the rigours that would control the operation of Section 70(1) of the I.T. Act are clearly manifested. [Para 19] [75-G-H; 76-A-D]

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1.2 The amendment to Section 70(1) of the I.T. Act brought in by Act No. 10 of 2009 makes the power of declaration of protected system even more stringent by further circumscribing the power of declaration of protected system only in respect of a computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, which is a defined expression in the I.T. Act. The amendment is not a first time introduction of parameters to govern the exercise of power under Section 70(1) of the I.T. Act. Rather, it is an attempt to circumscribe the power even further than what was prevailing under the pre-amended law, by narrowing down the ambit of

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A **“government work” so far as it is relatable to the facility of Critical Information Infrastructure, as defined under the Act. [Para 20] [76-E-G]**

B **1.3 The challenge made by the appellant before the High Court insofar as the Notification dated 27th December, 2002 is concerned was founded on a claim of copyright in the FRIENDS application software. The said claim, ex facie , is not tenable in the light of the provisions contained in Section 17(a) of the Copyright Act and the admitted/pleaded case of the appellant in the writ petition to the effect that it was entrusted by Microsoft to develop the software for which it received due consideration from Microsoft. If that be so, on the appellant’s own pleadings in the writ petition, it would not be entitled to claim copyright in the FRIENDS application software under Section 17(a) of the Copyright Act. Whether under clause 10 (under the head “Role of Government of Kerala”) of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala, the State would have a claim of copyright in view of Section 17(a) of the Copyright Act is altogether a different question which has no bearing on the claim of the appellant to copyright in the FRIENDS application software. In the present proceedings, the only point for adjudication is the claim of the appellant, as the developer of the application software, to be the first author of the said work so as to vest in him/it a copyright under the provisions of Section 17 of the Copyright Act, 1957, a claim which is palpably unfounded both on the basis of the provisions of Section 17(a) of the Copyright Act and under clause 10 (under the head “Role of Government of Kerala”) of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala. There is no ground for interference with the orders passed by the High Court. [Para 22] [76-H; 77-A-F]**

G **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 79 of 2008.**

From the Judgment and Order dated 24.05.2006 of the High Court of Judicature of Kerala at Ernakulam in W.A. No.685 of 2004.

H **R. Basant, Sr. Advs, A. Karthik, V.K. Sidharthan, Advs for the Appellant.**

Pallav Sisodia, Sr. Adv, G. Prakash, Jishnu M.L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Vijay Shankar V.L., P. V. Dinesh, Ms. Avani Bansal, Ms. Sindhu T.P., Ms. Arushi Singh, Bineesh K., Rajendra Beniwal, Advs for the Respondents. A

The Judgment of the Court was delivered by B

RANJAN GOGOI, J. 1. The appellant–B.N. Firos – proprietor of Comtech IT Solutions, Thiruvananthapuram had filed a Writ Petition challenging a Notification dated 27th December, 2002 issued under Section 70(1) of the Information Technology Act, 2000 (hereinafter referred to as “I.T. Act”) declaring the computer, computer system and computer network specified in the Schedule to the Notification to be “protected systems” under the I.T. Act. The vires of Section 70 of the I.T. Act itself was also challenged. The Writ Petition was dismissed. The said order of dismissal has been affirmed in writ appeal by a Division Bench of the High Court and the review filed there against has also been dismissed. Aggrieved, this appeal(s) has been filed. C D

2. The brief facts that will be required to be noticed are as follows:

In the writ/original petition filed by the appellant before the High Court it is stated that the appellant is the proprietor of Comtech IT Solutions, an Information Technology concern which is a member of Microsoft Developer Forum, a professional group of developers technically supported and guided by the Microsoft Corporation (India) Pvt. Ltd. E

3. In the year 1999, the 1st respondent – State of Kerala through the 4th respondent – Centre for Development of Imaging Technology (C-DIT), Thiruvanthapuram, a Total Solution Provider (TSP), had conceptualized a single window multiple agency bill collection system. The project was called “FRIENDS” (i.e. Fast, Reliable Instant, Efficient, Network for Disbursement of Services). According to the appellant – writ petitioner, Microsoft Corporation of India (Pvt.) Ltd. (hereinafter referred to as “Microsoft”) had offered to provide the Application Software and System Software free of cost for the pilot project. The appellant – writ petitioner, being a member of the Microsoft Developer’s Forum, was required by Microsoft to carry out the system study and to develop the pilot project for the “FRIENDS” project. F G

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A 4. After completion of the preliminary work, Microsoft placed orders with the appellant on 23rd May, 2000 pursuant to which the Software developed by the appellant was handed over to the 4th respondent and the Software was implemented as a pilot project at the first FRIENDS Centre at Palayam, Thiruvanthapuram in June 2000. As the said project was a success, the 1st respondent decided to extend the same to its 13 District Centres.

B 5. By a communication dated 31st January, 2001, the 4th respondent informed the appellant that the FRIENDS project, for which the appellant had developed the Application Software free of cost as part of the developers forum agreement with Microsoft, has been successful and the Government has decided to establish FRIENDS Integrated Citizens Service Centres in all the other 13 districts of the State for which the respondent No.4 would like to associate with the appellant for customization of the FRIENDS application software. Pursuant thereto an Agreement cum Memorandum of Understanding dated 19th February, 2001 was entered into between the appellant and the 4th respondent.

C 6. According to the appellant as the 4th respondent was attempting to transfer some of the essentials of the FRIENDS application software to another concern, namely, M/s Stanhop Technology, a criminal proceeding was instituted by the appellant against said M/s Stanhop Technology. Apprehending further attempts, an application for registration of his copyright in the FRIENDS application software was also filed by the appellant before the Registrar of Copyrights, New Delhi.

D 7. On the other hand, the 4th respondent had filed a suit i.e. O.S. No.8 of 2002 before the District Court, Thiruvananthapuram seeking a declaration that the 4th respondent is the exclusive owner of the copyright and the sole owner of the Intellectual Property Rights of the FRIENDS application software. In view of the aforesaid suit for infringement filed by the 4th respondent, the Registrar of Copyright rejected the appellant's application for registration of copyright in the "FRIENDS" software leaving the matter to be agitated after the decision in the civil suit.

E 8. The 4th respondent had also instituted a criminal case against the appellant for infringement of the application software.

F 9. While the said proceedings were pending, the State Government had issued a Notification dated 27th December, 2002 under Section 70(1) of the I.T. Act leading to the writ proceedings in question wherein the impugned orders have been passed by the High Court.

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10. Before the High Court the appellant had founded his claim to the reliefs sought primarily on the ground that the copyright in FRIENDS application software had vested in the appellant under Section 17 of the Copyright Act, 1957 and the Notification dated 27th December, 2002 issued under Section 70(1) of the I.T. Act was an infringement of the said right. The challenge to the vires of Section 70 of the I.T. Act was founded on the basis of excessive delegation of the legislative power inasmuch as, according to the appellant, the power of declaration as a “protected system” was unbridled, unguided and uncanalized.

11. The High Court negatived the challenge made by holding that the provisions of Section 2(k) of the Copyright Act, 1957 which defines “Government work” and Section 17(d) of the same Act on one hand and Section 70 of the I.T. Act has to be construed harmoniously. According to the High Court, if the said provisions are to be read and construed harmoniously the power of declaration of a “protected system” would be only in respect of “Government work”, the copyright in which of the Government is acknowledged by Section 17(d) of the Copyright Act, 1957. It is on the aforesaid broad basis that the contention of the appellant as regards invalidity of Section 70 of the I.T. Act was repelled.

12. Insofar as the challenge to the Notification dated 27/12/2002 under Section 70(1) of the I.T. Act, based on a claim of a copyright, is concerned the High Court took into account the fact that the registration of copyright sought by the appellant had been negatived by the Registrar of Copyright and that the civil suit in this regard filed by the 4th respondent was pending. The High Court further took the view that if according to the appellant he was the first owner of the copyright, as claimed, nothing prevented him from instituting a suit for infringement under Sections 60 and 61 of the Copyright Act, 1957 or from resorting to arbitration which is contemplated by clause 7 of the agreement dated 19th February, 2001.

13. The High Court, however, went a little further and took into account clause 10 (under the head “Role of Government of Kerala”) of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala. The said clause 10 reads as under:

“10. Departmental Task Force will monitor the actual implementation of the project vis a vis the milestones set by the TSP

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- A Intellectual Property Rights of the system developed by all the TSPs and Departments shall vest in the Government of Kerala. Government of Kerala will be free to deploy the same system or with modification in any of the Government/Semi Government/ Quasi Government Department/ Organization.”
- B The High Court held that the 4th respondent was a government agency and the Government had created the above agency as a Total Solution provider for developing software for the Government. The High Court further held that the 4th respondent was bound by the above clause and the appellant who undertook technical support by executing an agreement with the 4th respondent was also bound by the above clause
- C 10. The IPR copyright in respect of “FRIENDS” software therefore vests in the government and there is no clause in the agreement between the appellant and the 4th respondent to show that the 4th respondent has assigned the IPR right to the appellant. The High Court, accordingly, held that the Intellectual Property Rights in the software vested in the
- D Government so as to entitle it to declare the same as a “protected system” under Section 70(1) of the I.T. Act.

14. We have heard the learned counsels for the parties.

- E 15. Shri R. Basant, learned Senior Counsel appearing for the appellant has basically reiterated the arguments advanced before the High Court additionally reinforced by the amendments made to Section 70 of the I.T. Act which enables the exercise of the power to declare any computer resource as a “protected system” only if the same directly or indirectly affects the facility of Critical Information Infrastructure which has been defined by the Explanation to Section 70(1) of the I.T. Act as:

“Explanation: For the purposes of this section, “Critical Information Infrastructure” means the computer resource, the incapacitation or destruction of which, shall have debilitating impact on national security, economy, public health or safety.”

- G 16. Shri Basant has submitted that in clear distinction to what had been introduced by the Amendment (Act No.10 of 2009) the power under the erstwhile Section 70(1) of the I.T. Act to declare any computer, computer system or computer network to be a protected system was uncanalized and unguided delegation of legislative power. The learned

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counsel has submitted that the Amendment brought in by Act No. 10 of 2009 reinforces the contention of the appellant and vindicates the constitutional fragility of Section 70(1) of the I.T. Act as it then existed. A

17. Shri Basant has further submitted that from the materials on record there is no manner of doubt that the appellant had on its/his own developed the software and, therefore, under the provisions of the Copyright Act, 1957 the appellant must be acknowledged to be the first owner of the copyright. Incidentally, the computer programmes, tables and compilations including computer databases have been included in the definition of “literary work” under Section 2(o) of the Copyright Act, 1957 with effect from 10th May, 1995. B C

18. Shri Pallav Sisodia, learned Senior Counsel appearing for the respondent – State has contested the arguments advanced and has submitted that, as rightly held by the High Court, Section 70 of the I.T. Act has to be read along with Section 2(k) and Section 17 of the Copyright Act, 1957 in which event the power of declaration of “protected system” would be available within clearly circumscribed limits and would not suffer from any excessive delegation. So far as the claim of copyright is concerned, Shri Sisodia has submitted that the appellant had developed the software for Microsoft which had undertaken to make available the same to the first respondent through the 4th respondent free of cost. The invoice raised by the appellant on Microsoft in this regard shows payment of remuneration by Microsoft to the appellant. Therefore, under Section 17(a) of the Copyright Act, 1957 Microsoft is the first owner of the copyright. In any event, according to Shri Sisodia under clause 10 (under the head “Role of Government of Kerala”) of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala, the intellectual property vests in the Government. The claim of copyright by the appellant will, therefore, not subsist. D E F

19. The contention with regard to excessive delegation of legislative power under Section 70(1) of the I.T. Act has been sought to be fortified by Shri Basant by relying upon several pronouncements of this Court. It will hardly be necessary to take specific notice of any of the said decisions inasmuch as the proposition sought to be canvassed is too well established to raise any dispute or doubt. However, while considering the said question as raised before it the High Court in the impugned order had, G

A and in our view correctly, held that the provisions of Section 70(1) of the I.T. Act has to be read conjointly with Section 2(k) and Section 17 of the Copyright Act, 1957 in order to give due effect to the related provisions of two different enactments made by the legislature. Section 70(1) of the I.T. Act as in force at the relevant point of time (at the time when the matter was under consideration in the High Court) or even after its amendment in 2009 bars access to a person to the system declared as a “protected system” without authorization from the Appropriate Government. Plainly read, the power of declaration of a “protected system” may invade a copyright which may be vested in a private owner.

B However, such a situation is taken care of by the provisions contained in Section 2(k) of the Copyright Act, 1957 which defines “Government work” and Section 17(d) of the Copyright Act, 1957 which vests in the Government, copyright in a government work as defined by Section 2(k). The balance is struck by Section 17 between copyright pertaining to any other person and copyright vested in the Government in a “government work”. Section 70 of the I.T. Act, therefore, cannot be construed independent of the provisions of the Copyright Act; if Section 70 of the I.T. Act has to be read in conjunction with Section 2(k) and Section 17 of the Copyright Act 1957 the rigours that would control the operation of Section 70(1) of the I.T. Act are clearly manifested.

20. The amendment to Section 70(1) of the I.T. Act brought in by Act No. 10 of 2009, in our considered view, makes the power of declaration of protected system even more stringent by further circumscribing the power of declaration of protected system only in respect of a computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, which is a defined expression in the I.T. Act (already extracted). The amendment, in our considered view is not a first time introduction of parameters to govern the exercise of power under Section 70(1) of the I.T. Act. Rather, it is an attempt to circumscribe the power even further than what was prevailing under the pre-amended law, by narrowing down the ambit of “government work” so far as it is relatable to the facility of Critical Information Infrastructure, as defined under the Act.

21. The challenge made by the appellant before the High Court insofar as the Notification dated 27th December, 2002 is concerned was founded on a claim of copyright in the FRIENDS application software. The said claim, *ex facie*, is not tenable in the light of the provisions

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contained in Section 17(a) of the Copyright Act and the admitted/pleaded A
case of the appellant in the writ petition to the effect that it was entrusted
by Microsoft to develop the software for which it received due
consideration from Microsoft. If that be so, on the appellant's own
pleadings in the writ petition, it would not be entitled to claim copyright in
the FRIENDS application software under Section 17(a) of the Copyright B
Act. Whether under clause 10 (under the head "Role of Government of
Kerala") of the Memorandum of Understanding between Total Solution
Providers for E-Governance and Government of Kerala, the State would
have a claim of copyright in view of Section 17(a) of the Copyright Act
is altogether a different question which has no bearing on the claim of C
the appellant to copyright in the FRIENDS application software. In the
present proceedings, the issue of inter-parties rights between Microsoft
and 1st respondent/4th respondent is not in dispute to require any resolution.
The only point for adjudication is the claim of the appellant, as the
developer of the application software, to be the first author of the said
work so as to vest in him/it a copyright under the provisions of Section D
17 of the Copyright Act, 1957, a claim which is palpably unfounded both
on the basis of the provisions of Section 17(a) of the Copyright Act and
under clause 10 (under the head "Role of Government of Kerala") of
the Memorandum of Understanding between Total Solution Providers
for E-Governance and Government of Kerala.

22. For the aforesaid reasons, we do not find any ground for E
interference with the orders passed by the High Court. Accordingly,
while affirming the said orders of the High Court we dismiss the appeal(s)
leaving the parties to bear their own costs.

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MOHAN LAL

v.

NAND LAL

(Civil Appeal No. 5887 of 2009)

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MARCH 21, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ]

Will: Credibility – On facts, suit by respondent seeking ejection of his brother-appellant from the property – Challenged by the appellant – Subsequently, respondent amended the plaint – Sought relief on the basis of Will by the grandfather bequeathing the house property in respondent’s favour – Trial court decreed suit in favour of respondent – High Court upheld the order – On appeal, held: There is no suspicious circumstance surrounding the genuineness of the Will – Will was executed by the testator in the year 1945 and it was drawn in the own handwriting of the executant himself – It cannot be said that Will lacks credibility because the idea of bringing it on record was an afterthought of the respondent, that too after filing the written statement – Merely taking the ground that the name of appellant has also been mutated in the municipal record and thereby he acquires right in the property, cannot be given effect to in the absence of any cogent evidence in support of the claim – Once the Will is believed to be a genuine piece of document, the concurrent findings recorded by the courts below, upheld.

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Dismissing the appeal, the Court

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HELD : 1.1 The Will was executed by the testator in the year 1945 and it was drawn in the own handwriting of the executant himself. His handwriting was also duly proved by PW5, grandson-in-law of late G-grandfather, who used to correspond with him and thereby well acquainted with the handwriting of the testator. The submission that the Will lacks credibility because the idea of bringing it on record was an afterthought of the respondent-plaintiff, that too after filing the written statement, cannot be sustained for the reason that PW2, Clerk of the Bank, clearly deposed, supported by documentary evidence, that the

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respondent secured a loan from the Bank by pledging the Will in the year 1964 and since then the Will was kept in the bank. The said witness, PW2 was not cross-examined at the trial. Going by the material on record, there is no suspicious circumstance surrounding the genuineness of the Will. [Para 7] [81-E-G]

1.2 Merely taking the ground that the name of appellant has also been mutated in the municipal record and thereby he acquires right in the property, cannot be given effect to in the absence of any cogent evidence in support of the claim. The record shows that prior to the addition of his name in the municipal records, when the respondent's name alone was there, the defendant-appellant had deposited the taxes in the name of plaintiff-respondent, and there was no material on record to show how the name of appellant-defendant was added in the municipal records. The courts below have thoroughly assessed the material evidences and accordingly came to the right conclusion. Once the will is believed to be a genuine piece of document, there is no need to delve into the matter further. In such circumstances, there is no reason to disturb the concurrent findings recorded by the courts below. [Para 8] [81-H; 82-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5887 of 2009.

From the Impugned Order dated 29.11.2006 of the High Court of Madhya Pradesh, Jabalpur Bench at Indore in First Appeal No.239 of 1996.

J.P. Singh, R.C. Kaushik, Advs for the Appellant.

Sanjeev K.Bhardwaj, Vijay K. Jain, Advs for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. This appeal by special leave is directed against the judgment dated 29th November, 2006 passed by the High Court of Madhya Pradesh, Bench at Indore in First Appeal No. 239 of 1996 whereby the High Court while confirming the judgment of the trial Court, dismissed the appeal preferred by the appellant with costs.

2. In the year 1989, the respondent herein instituted a Suit, before the District Judge, Indore seeking ejectment of his brother—the appellant

A herein from the suit property and also claiming mesne profits. The
defendant—appellant herein contested the Suit on the ground that he
got half share in the disputed property as it originally belonged to his late
maternal grandfather who was survived by only two daughters. On the
death of his grandfather his mother entered the succession and he has
B been staying with his mother in the suit property. Therefore the plaintiff—
respondent cannot claim to be the sole owner of the suit property and
the Suit itself is misconceived. Subsequently, the respondent—plaintiff
amended the plaint to the effect that during the lifetime of his grandfather,
late Goverdhanlal bequeathed the house property by executing a Will on
9th September, 1945 in favour of the plaintiff, and after the death of his
C grandfather in the year 1947, he has become sole owner of the Suit
property. Taking into account the Will dated 9.9.1945, the trial Court
decreed the Suit in favour of the respondent—plaintiff. The aggrieved
defendant—appellant herein filed first appeal before the High Court. By
the judgment impugned herein, the High Court confirmed the judgment
D of the trial Court and dismissed his appeal. Hence, the appellant is before
us in this appeal assailing the findings of the Courts below.

3. We have heard learned counsel for the parties and carefully
gone through the material on record.

4. The case of the appellant is that he is entitled to half share in
E the disputed property being grandson of late Goverdhanlal and his name
was also mutated in the municipal records. The Will in question was put
in evidence by the plaintiff by amending the plaint after the filing of
written statement by him. It was not even executed in accordance with
the provisions of Sections 61 and 63 of the Indian Succession Act and
F therefore, it cannot be taken into account as a valid and genuine one
under the Evidence Act. Further argument on behalf of the appellant is
that late Goverdhanlal has two surviving daughters, namely, Manibai
(mother of the parties) and Durgabai and after the death of Durgabai,
her daughters Sarjubai and Rajubai also acquired rights on the disputed
property and therefore they are necessary parties to the Suit, but none
G of these legal heirs of Late Goverdhanlal was made a party to the Suit.
Under these circumstances, the Courts below could not have believed
the Will to be a genuine document, but by decreeing the Suit in favour of
the plaintiff—respondent on the basis of the said Will, both the Courts
below have committed an error of law.

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5. On behalf of the respondent-plaintiff it was submitted that at the time of execution of the Will on 9th September, 1945 the respondent—plaintiff alone was the male child in the family and the Will was written by Late Goverdhanlal, who was an advocate by profession, in his own handwriting. At the time of death of Late Goverdhanlal, the respondent-plaintiff was about 13 years age and the appellant-defendant was born about 8 years after the death of Late Goverdhanlal. The appellant, being younger brother of the respondent, was permitted to live in the disputed property with an assurance from him that he would vacate the house and hand over vacant possession of the house to the respondent when demanded. But the appellant failed to keep his promise and dishonestly got his name mutated in the records of property tax. The Courts below have rightly decided the matter after assessing the witnesses and taking the Will into consideration and therefore the appeal at hand deserves to be dismissed.

6. Now the short question that arises for consideration of this Court in this appeal is whether the Courts below were right in decreeing the suit in favour of the respondent—plaintiff on the basis of the Will.

7. It is not in dispute that the Will was executed by the testator in the year 1945 and it was drawn in the own handwriting of the executant himself. His handwriting was also duly proved by PW5—Nandlal Nagar, grandson-in-law of late Goverdhanlal, who used to correspond with him and thereby well acquainted with the handwriting of the testator. The argument that the Will lacks credibility because the idea of bringing it on record was an afterthought of the respondent—plaintiff, that too after filing the written statement, cannot be sustained for the reason that PW2—Tushar Akolekar, Clerk of Indore Paraspar SahkariBank, clearly deposed, supported by documentary evidence, that the respondent secured a loan from the Bank by pledging the Will in the year 1964 and since then the Will was kept in the bank. It is also on record that the said witness (PW2) was not cross-examined at the trial. Going by the material on record, we do not find any suspicious circumstance surrounding the genuineness of the Will.

8. Merely taking the ground that the name of appellant has also been mutated in the municipal record and thereby he acquires right in the property, cannot be given effect to in the absence of any cogent evidence in support of the claim. The record shows that prior to the

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A addition of his name in the municipal records, when the respondent's name alone was there, the defendant—appellant had deposited the taxes in the name of plaintiff—respondent, and there was no material on record to show how the name of appellant—defendant was added in the municipal records. In our opinion, the Courts below have thoroughly assessed the material evidences and accordingly came to the right conclusion. Once the will is believed to be a genuine piece of document, there is no need for us to delve into the matter further. In such circumstances, we do not find any reason to disturb the concurrent findings recorded by the Courts below by reasoned judgments.

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C 9. For all the aforesaid reasons, the appeal lacks merit and is, therefore, dismissed with no order as to costs.

Nidhi Jain

Appeal dismissed.