

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

IN THE PRIVY COUNCIL

No.2 of 1968

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

DR. NATARAJAN SITHAMPARANATHAN
Respondent-Appellant
Appellant

-and-

10 RAMANATHAN MATHURANAYAGAM
Petitioner-Respondent
Respondent

CASE FOR THE RESPONDENT

1. This is an appeal from a judgment and order of a Bench of two Judges of the Supreme Court of Ceylon, dismissing with costs the appeal of the present Appellant from an order of the District Court of Colombo (i) vacating an order absolute granting probate of a Last Will dated the 3rd of March 1961 on the ground that such
p.172-175
p.152-165
- 20 Will was not the act and deed of the testator and that he was not competent to execute the Will and (ii) entering order absolute admitting the Last Will dated the 2nd February, 1961 to probate.
2. It is common ground that the deceased Velautham Natarajan died on the 5th of March, 1961, On the 12th of April, 1961, the
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- 30 deceased's son, who is the present Appellant, made application to the District Court of Colombo, stating that the deceased had executed his last Will on the 3rd of March, 1961, (i.e. two days before his death) and claiming probate as executor named in the said Will.

p.14 3. The present Appellant also stated in the said application that he does not apprehend any opposition to the grant of probate to him and the District Court, on the 12th day of April, 1961, entered order absolute, ex parte, declaring the present Appellant entitled to probate.

p.32-33 4. On the 1st of August, 1961, the present Respondent made application to the District Court of Colombo stating that the Will of the 3rd of March, 1961 was not the act and deed of the deceased and that the deceased executed his Last Will on the 2nd February, 1961 in which both the present Appellant and Respondent were appointed executors. The present Respondent prayed that the District Court vacate the order absolute dated the 12th of April, 1961 and enter order declaring the present Respondent and Appellant entitled to probate of the last Will dated the 2nd of February, 1961. 10 20

5. No objection was taken by the present Appellant to the validity of the Will of the 2nd of February, 1961 and the principal questions that arise upon this appeal is whether the Last Will dated the 3rd of March, 1961 was the act and deed of the deceased Natarajan and whether the deceased was competent to execute the said Will. The burden was on the present Appellant to satisfy the conscience of the Court that the instrument he propounded was the Last Will of the free and capable testator. 30

p.40-57
p.61-83
p.57-61
p.84-86 6. On behalf of the present Appellant the evidence of the following persons was led before the District Court: (i) Shanmugampillai, the eldest brother of the deceased (ii) Caderamanpulle, the Proctor who attested the Will (iii) Korothu, who was one of the witnesses to the Will of the 3rd of March, 1961 and (iv) Dr.Austin who had visited the deceased on the 2nd of March, 1961. The present Appellant who was present at the time of the execution of the Will did not give evidence. Further the other witness to the Will, Dr.Ketharanathan also did not testify. 40

7. The learned District Judge rejected the evidence of Korothu and refused to act on Mr. Caderamanpulle's version of the instructions given to him by the deceased. Stating that there are serious suspicions attaching to the execution of the Will, the Learned District Judge concluded that the evidence in the case was such as would not satisfy the conscience of the Court that the Will in question was the act and deed of the testator in the sense that he was competent to execute the Will.

8. The Supreme Court in considering the Learned District Judge's rejection of Mr. Caderamanpulle's evidence, rightly took the following view:

"The fact that the Judge rejected the Proctor's evidence on the basis that the proctor was careless, and not dishonest or untruthful, is not sufficient reason to hold at this stage that the evidence should have been accepted"

9. It is respectfully submitted that the following analysis by the Supreme Court of the judgment of the Learned District Judge is right:

"In the case of Dr. Austin, his evidence that the testator was in good physical and mental condition on 2nd March did not satisfy the trial Judge that the condition must have remained the same on the next day. The reasons for this attitude are stated in the judgment:

(a) The physical weakness of the testator was apparant from his shaky and illegible signature: (the Proctor asked him to sign a second time because the first signature 'did not seem good').

(b) The Judge accepted the evidence of one Wilbert that the testator had been given a blood transfusion before the Will was signed.

(c) Two doctors, one the testator's son, who is the appellant in this case, and the other an attesting witness to the Will, were present when the Will was signed. The trial Judge viewed with suspicion the failure to lead the evidence of either of these doctors as to the actual condition of the testator."

10. The conclusion reached by the Supreme Court that the evidence led for the Appellant did not suffice to satisfy the conscience of the District Judge that the testator did decide upon such a complete change of disposition and that sitting in appeal they did not feel justified in holding that the trial judge should have reached a different conclusion is right. 10

11. The Respondent respectfully submits that the present appeal should be dismissed with costs for the following, amongst other reasons: 20

R E A S O N S

(i) BECAUSE on the question of fact that arose for his consideration the learned District Judge has rightly held that the Appellant had failed to prove that the Will of the 3rd March, 1961, was the act and deed of the deceased Natarajan.

(ii) BECAUSE the Supreme Court rightly held that sitting in appeal, it did not feel justified in holding that the trial Judge should have come to a different conclusion. 30

(iii) BECAUSE the learned District Judge rightly refused to act upon the evidence of the Proctor, Caderamanpulle and the witness Korothu.

(iv) BECAUSE the learned District Judge rightly expressed "great doubts" as to the truth of the evidence of Shanmugampillai in regard to the summoning of the Proctor. 40

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- (v) BECAUSE the learned District Judge rightly viewed with suspicion the failure to lead the evidence of the two doctors who were present at or about the time of the execution of the Will in question.
 - (vi) BECAUSE the learned District Judge rightly viewed with suspicion the claim that the testator on his death had abandoned his earlier fixed intention to institute a trust for religious purposes.

N.SATYENDRA

ADVOCATE.

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-and-

RAMANATHAN MATHURANAYAGAM
(Petitioner-Respondent) Respondent

CASE FOR THE RESPONDENT

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