

## **A WRITTEN STATEMENT MUST NECESSARILY DEAL WITH THE ALLEGATIONS IN THE PLAINT PARAGRAPH WISE**

### **INTRODUCTION:**

The Apex Court in a recent decision in *Thangam and Another vs Navami Ammal*<sup>1</sup>, inter alia observed that Order VIII Rule 3 and Rule 5 of the Civil Procedure Code, 1908, required specific admission and denial of the pleadings in the plaint. The allegations in the plaint would have to be dealt para-wise.

### **FACTS:**

One Mr. Palaniandi Udyar ("**Testator**") held about 8 acres of land and three houses. By way of a registered Will dated 9<sup>th</sup> October, 1984, ("**Will**") the Testator bequeathed approximately 3.5 Acres of land in favour of the Respondent (the Plaintiff in the Suit) who was the daughter of the Testator's brother, stating therein that she was like his daughter.

The Testator was the husband of Appellant no. 1 (the Defendant No. 1 in the Suit), Thangam and father of Appellant no. 2 (the Defendant No. 2 in the Suit), Laila.

A suit filed by the Respondent (the Plaintiff therein) for declaration and injunction was decreed by the Trial Court, holding the Will to be genuine. In an appeal filed by the Appellants, the judgment and decree of the Trial Court was reversed by the First Appellate Court. In second appeal preferred by the Respondent, the judgment and decree of the First Appellate Court was set aside and the judgement of the Trial Court was restored by the Madras High Court.

Being aggrieved with the impugned order of the Madras High Court, the Appellants preferred the

present appeal challenging the genuineness of the Will.

### **ISSUE FOR CONSIDERATION:**

The main issue for consideration before the Apex Court was as follows:

Whether the Will in question was surrounded by suspicious circumstances?

### **SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

It was submitted on behalf of the Appellants that the execution of Will was surrounded by various suspicious circumstances and deserved to be discarded. The finding of facts recorded by the First Appellate Court was erroneously reversed by the Madras High Court without the same being perverse.

It was further submitted that there were discrepancies in the statements of the attesting witnesses to the Will. The health of the Testator was not good and he was not in a position to understand and comprehend the contents of the Will. There were differences in the thumb impressions of the testator on the Will and on the register in the office of the Sub-Registrar.

<sup>1</sup> Civil Appeal No. 8935 of 2011

## SUBMISSIONS ON BEHALF OF THE RESPONDENT:

It was submitted on behalf of the Respondent that the execution of Will by a person in favour of any other relative always would mean that the Testator wished to take away some property from the normal course of inheritance.

The entire property owned by the Testator was not given to the Respondent by way of Will, rather it was only a part thereof.

It was further submitted that there was no specific denial to the claim made by the Respondent in the plaint, by the Appellants in the written statement filed by them. There was no para-wise reply given in the written statement. In the absence thereof, the allegations in the plaint were deemed to be admitted.

## JUDGMENT:

Upon considering the evidence on record of the witnesses, the Apex Court observed that the Will could not be held to be suspicious on the ground of the alleged ill-health of the Testator at the time of the execution of the Will and that at the time of execution of the Will, the Testator was fully conscious of the welfare of his widow and minor daughter as sufficient property was left for them.

The Apex Court observed that no error had been committed by the Madras High Court in holding that the Will was not surrounded by the suspicious circumstances. The Testator was conscious of the fact that he had a wife and a minor child whose interest had been taken care of by leaving part of the property for them.

Thereafter, the Apex Court observed in respect of the manner in which the pleadings were filed

before the Trial Court as follows "A perusal of the plaint filed by the respondent shows that it contains ten paragraphs besides the prayer. In the written statement filed by the appellants, no specific para-wise reply was given. It was the own story of the respondent containing fifteen paragraphs besides the prayer in para 16."

The Apex Court observed that in the absence of paragraph wise reply to the plaint, it would become a roving inquiry for a Court to find out in which line of the written statement a paragraph in the plaint was either admitted or denied. Further, there was no specific admission or denial to the allegations in different paragraphs of the plaint.

The Apex Court observed that Order VIII Rule 3 and Rule 5 of the Civil Procedure Code, 1908, provides for specific admission and denial of pleadings in the plaint. A general or evasive denial would not be treated as sufficient. The Apex Court further observed that proviso to Order VIII Rule 5 of the Civil Procedure Code, 1908, provided that even admitted facts may not be treated to be admitted and a Court may require such admitted facts to be proved. This was an exception to the general rule that facts which were admitted were not required to be proved.

The Apex Court relied upon its earlier decisions in ***Badat and Co. Bombay vs. East India Trading Co.***<sup>2</sup> and in ***Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar***<sup>3</sup> in support of its observations.

The Apex Court on not finding any merit in the appeal, dismissed the appeal.

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<sup>2</sup> AIR 1964 SC 538

<sup>3</sup> (1993) 4 SCC 6

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*