REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SAN FERNANDO

H.C.A. S – 2348 of 2004

Claim No. CV2007-01702

IN THE ESTATE OF HENRY PARMASHWAR

(DECEASED)

Between

LYNDSAY PARMASHWAR

SHIRLEY PARMASHWAR

Claimants

And

DULCY MAHARAJ also called

DULCY MAHARAJ PARMASHWAR

Defendant

Before the Honourable Justice V Kokaram

Appearances:

Mr. E. Koylass S.C. and C. Dookeran for the Claimants

Mr. W. Seenath and Mr. Capildeo for the Defendant

JUDGMENT

SUMMARY OF REASONS

Introduction

1. This is a claim by the Claimant to pronounce for the validity of a will dated 1998 made by Mr. Henry Parmashwar ("the Deceased") who died on the 30th December 2003. The picture painted of the deceased in these proceedings is one of a free spirit. A many of many relationships. At a certain point in Senior Counsel's cross examination one was tempted to characterize the deceased as a philanderer. However, the simple fact is he died as the lawful husband of Dulcy Maharaj, the Defendant, having married her on 28th September 1996. It was his second marriage. The deceased was previously married to Shirley Parmashwar, the second Claimant and who bore him four children including the first Claimant. That marriage lasted 40 years and ended in a divorce on 10th June 1996.

2. The Court was told the story of the deceased living a life between two families after his divorce. One with his estranged wife and family in Chin Chin, Cunupia. The other with his new wife, the Defendant, in Cocoyea Village, San Fernando. The deceased also maintained another residence on Eastern Main Road, Tacarigua. It was a property in which the Defendant says they invested their time and money in renovating and eventually sublet it. At those premises the Deceased managed a pub "Air Bridge Restaurant and Pub". The first Claimant acknowledged that he frequented the Tacarigua property but that it was she who collected the rent from the tenants on the property. Both women however acknowledged that the deceased did as he pleased and they cannot deny that he probably spent time with the other in their respective residences.

3. The deceased took ill in December 2003 and was taken to a medical institution for treatment. There he succumbed to his illness. However his will was allegedly found by the Claimants amongst his papers at the Tacarigua property upon his instructions to them to check for some important documents in his bedroom. No party in this claim was made aware prior to that discovery that the deceased had made any will during his lifetime.

4. By that will the Claimants were appointed executrix. His former wife obtained a life interest in the Tacarigua property with the remainder to the first Claimant. His money held in various accounts, his motor vehicle and power boat were bequeathed to the children of his first marriage. His present wife the Defendant was bequeathed only half of his account held at the Royal Bank, High Street, San Fernando.

5. Both women are now tugging over his estate. The second Claimant claims her entitlement under the said 1998 will. The Defendant claims her entitlement under intestacy on the basis that the 1998 will is a forgery. If the 1998 will is valid, his former wife and family gains the majority of the estate and his wife who is described in the will by the deceased as "a person with whom I have never lived together, and with whom I entered a marriage of convenience to assist her because of her problems with her ex-husband" will be entitled only to half of the monies in his Royal Bank account. The effect however of pronouncing against the validity of the will is that the new wife gains an interest on an intestacy under Section 24 (4) under the Distribution of Estates Act.

6. During the course of cross examination Senior Counsel remarked to the Defendant that the deceased was "fooling her up" and "had woman like bush", that clearly she did not know what her husband was doing. It is clear after hearing all the evidence that indeed such a remark is true for both families. The deceased clearly lived separate lives and this forms the backdrop to determining the validity of this will.

7. The principles of pronouncing for the validity of a will are clear. The onus of proving that the will has been executed as required by law lies on the person propounding the will. It is a shifting onus. There is a presumption of due execution where there is a proper attestation clause but that presumption may be rebutted by evidence coming from the Defendant or otherwise. The burden of proving a forgery lies on those who allege it. In this case the evidence of due execution was given through the attesting witness Mr. Visham Lall. The evidence of a forgery was given through the witness Mr. Glenn Parmassar.

8. I have assessed their evidence against the evidence of all the witnesses in this case and I have taken into consideration the respective versions of the living arrangements and circumstances of the deceased. I conclude on the evidence that the Defendant has discharged the burden on her of proving on a balance of probabilities that the will is a forgery and the Claimant has ultimately failed to demonstrate the that will is a valid one.

9. I say so for the following reasons:
    a. Mr. Visham Lall, the attesting witness to the will, was not a credible witness. His evidence in chief did not appear to be in his own words and appeared contrived.
    b. I found it strange that this witness without prompting from the deceased and without knowing any of the formalities of execution of a will would give the secretary to sign the will after he did.
    c. Mr. Lall himself is not truly an independent witness as he admits he is a friend of the Claimants. There is no explanation as to how the deceased was capable of making this "homemade" will with the use of proper legal clauses. Mr. Lall himself appeared to be unsure of many terms he used in his witness statement.
    d. The will on its face contains an obvious and glaring error in the spelling the deceased's name in 11 places in the will which went undetected and unchanged by either the deceased or his witnesses. This despite the evidence of Mr. Lall that the deceased was an intelligent man and studied this will before signing it.
    e. The alleged description of the relationship between the deceased and his wife in the will is in my view, based on the totality of the evidence, simply not true. He did live with her as man and wife in 1998 when the will was signed. He maintained a residence with her in San Fernando. He held a bank account in San Fernando. He and the Defendant shared the apartment in Tacarigua together.

f. There is absolutely no credible evidence in this case that the marriage to the Defendant in 1998 was as described in the will a "marriage of convenience" to help out the Defendant. None of the witnesses for the Claimant knew about the Defendant until after the death of the deceased. In fact even if I accept the Claimants version of the facts it would only demonstrate in my view that he lived with his former wife, the second Claimant after the divorce in a relationship of convenience with her and there appeared to be no basis to give to her a life interest in the Tacarigua property.

g. The Claimants were evasive under cross examination and displayed hostility at times which made me less inclined to believe their version that the deceased lived happily with them in their house before his demise.

h. The Claimants harboured an unexplained hostility towards the Defendant even though they acknowledged that the former husband/father was a "big man" and could do what he wanted.

i. The 1998 will is one of several wills. There is also an alleged later will dated 2003. This later will put to the lie the Claimants' reliance on the appearance of the signature of the will of the 1998 will as being authentic. They claimed that the signature on the 1998 will appeared normal. But they also said the same about the 2003 will. Yet they refused to propound for the validity of that will and in fact are prepared to say that that is not his duly executed will. They go further to admit in subsequent High Court proceedings that the 2003 will is a forgery.

j. In light of the admission by the Claimants that based on forensic report they will not rely on the 2003 will there is no explanation why the Claimants did not seek a forensic report of its own to support the authenticity of the 1998 will.

k. Mr. Glenn Parmassar's report demonstrated that the signature was not that of the deceased. His cross examination confirmed this finding and he was

unshaken in his conclusions and explanations. He was in my view a credible witness.

l. The Defendant herself in contrast to the Claimants was calm and clear in giving her evidence. She appeared credible and she was unshaken in cross examination.

10. I have considered the authorities submitted in particular **Barry v Butlin** [1838] 2 Moo P.C. 480**, Tyrrell v Painton** [1895] 1 Q.B. 202**, Merle Carroll v Kenrick Barry Nanan** H.C.3955/1994 on the circumstances surrounding the execution of a will which may excite the suspicion of the Court. That enquiry is fact specific. On the facts in this case I am satisfied that there is enough suspicion surrounding the execution of this will that it would be unsafe for this Court to propound for its validity. I come to this conclusion based on the following:

a. The clear and cogent evidence of Mr. Glenn Parmassar.
b. The obvious errors in the will.
c. The discussion in the will of the marriage with the Defendant as one of a "marriage of convenience" which I hold is not borne out by the evidence. Further the will speaks to the marriage as a means to help the Defendant with her problems with her ex-husband. There is no evidence on this case about any problem with any former spouse of the Defendant.
d. The attesting witness' unsatisfactory evidence.
e. The Claimants evasiveness conceding the 2003 will.
f. The discovery of this will by the Claimants.
g. The only attesting witness is a friend of the Claimants and it is doubtful whether he did not have an interest to serve. I noted as well the keen interest he played in staying through the proceedings even after he gave his evidence.
h. The Claimants failed to obtain a forensic report when they were aware of the existence from Mr. Parmassar's report during the course of these proceedings.

i. There is an admission that the signatures of the 1998 and 2003 will appear the same yet they confess that the 2003 will is a forgery.

j. Having regard to my finding that there was a happy relationship with the Defendant at the time of the execution of the will the devise given is not consistent with that relationship.

11. I do not agree with Claimants submission that the evidence sought to be used to suggest suspicious circumstances is just too insignificant to mount such challenge. It is true that "The Court's right to have in all cases the strongest evidence before it before it believes that a will with a perfect attestation clause and signed by a testator was duly executed otherwise the greatest uncertainty would prevail in the proving of wills". I also agree that "The presumption of law is largely in favour of due execution of a will, and in that light a perfect attestation clause is the most important element of proof." **Wright v Rogers & Goodison** (1869) 1 L.R. 1 P&D. 678. However, I am of the view that there is sufficient evidence before this Court to excite its suspicion over the validity and execution of this will.

12. In the circumstances on a balance of probabilities this Court holds that the 1998 will was not a valid expression of the Deceased's testamentary intentions and that accordingly the Deceased died intestate as is contended by the Defendant.

13. The Claimants case is therefore dismissed with costs. The Defendant and the Deceased's children are therefore entitled to a share of the estate on intestacy. The Defendant has made no submissions on her counterclaim and I assume that the Defendant is content that the Court has pronounced against the 1998 will.

15th April 2011

Vasheist Kokaram

Judge