

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment :- 06.08.2015

Date of Pronouncement : 14.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

T.O.S.No.101 of 2013

S.Anandan ... Plaintiff

.. Vs ..

1. S.Kadhiravan
2. S.Madhivanan
3. S.Kannan
4. S.Balan
5. K.Chellammal
6. D.Malarvizhi ... Defendants

This Suit is filed under Sections 232 and 276 of the Indian Succession Act 1925 r/w. Order XXV Rule 5 of O.S. Rules 1956, for grant of Letters of Administration.

For plaintiff : Mr.R.Kannan

For defendants : Ex-Parte

सत्यमेव जयते

JUDGMENT

This suit has been filed by the petitioner in Testamentary O.P.No.729 of 2012 against six respondents. When it was in O.P. stage, the learned counsel for the respondents had filed a caveat against the grant of letters of administration on the last Will and Testament of Mr.S.Sankaran and therefore, the Caveat was considered

and the O.P. was converted into Testamentary Original

Suit in T.O.S.No.101 of 2013.

2. The plaintiff is the son of the deceased testator Mr.S.Sankaran and defendants 1 to 4 are the sons and defendants 5 and 6 are the daughters of the deceased Mr.S.Sankaran. The deceased left the plaintiff and defendants as his surviving next kin according to law under Section 15(a) of the Hindu Succession Act. The testator Mr.S.Sankaran died on 19.06.2001 and Ex.P.1 is the Death Certificate. The wife of the deceased Mr.S.Sankaran viz., Tmt.Padmavathy predeceased him on 24.12.1997 and parents of the deceased also predeceased him. The testator Mr.S.Sankaran had executed a Unregistered Will and Testament on 10.05.1999 at Chennai in the presence of witnesses, bequeathing the property to the plaintiff. P.W.2-Chandrakanth and one Mr.R.Ravikumar are the attesting witnesses.

3. P.W.2, in his deposition, has stated as follows:-

"I know the Testator Mr.S.Sankaran as family friend. As such I am well acquainted with his signature. The Testator executed his last Will and Testament on 10.05.1999 in my presence and in the presence of Mr.R.Ravikumar. At his request, I subscribed my signature as the first attesting witness along with Mr.R.Ravikumar, who attested the

Will as the second attesting witness in the presence of the Testator. Thus, all of us signed in each other's presence. The Testator was in a sound and disposing state of mind, memory and in good health at the time of execution of Ex.P.2 Will."

4. In view of the above deposition given by P.W.2, it is clearly proved that the deceased testator Mr.S.Sankaran executed the Will-Ex.P.2 in the presence of attesting witnesses in a sound and disposing state of mind, memory and in good health. The execution of Ex.P.2-Will is proved by the evidence of P.W.2. By the said will, the deceased had not appointed any Executor. The plaintiff alone as beneficiary of the deceased has filed this suit for the grant of letters of administration.

5. The defendants have been duly served and since they have not appeared, they were set ex-parte on 06.08.2015.

6. The plaintiff was examined as P.W.1. In his proof affidavit, P.W.1 has stated that his father Mr.S.Sankaran died on 19.06.2001 leaving behind him his five sons and two daughters as legal heirs, but bequeathed the property mentioned in the Will only in his favour. The plaintiff is entitled to succeed to the properties of the deceased. The plaintiff has filed the

original death certificate of Mr.S.Sankaran which was marked as Ex.P.1 and the following documents have been marked. Ex.P.2 is the original Unregistered Will dated 10.05.1999; Ex.P.3 is the photocopy of the Legal heirs Certificate; Ex.P.4 is the affidavit of assets showing the net value of the property at Rs.10,00,000/-; Ex.P.5 is paper publication effected in English daily 'News Toady' on 19.03.2013; Ex.P.6 is the paper publication effected in Tamil daily 'Malai Sudar' on 26.03.2013 and Ex.P.7 is the affidavit of attesting witness Mr.V.Chandrakanth.

7. Though the plaintiff had effected paper publication regarding filing of the Petition (in English and Tamil Dailies -Exs.P.5 and P.6) for Letters of Administration, so far, no objections have been received from any one. Plaintiff has also filed Ex.P.4-Affidavit of Assets, which shows that the net value of the assets mentioned in Ex.P.2-Will is Rs.10,00,000/-. The plaintiff has also undertaken to administer the property and file inventory as and when required by the Court.

8. From the evidence of P.Ws.1 and 2 and the materials available on record, the execution and due attestation of the Will-Ex.P.2 is proved in accordance with law. The plaintiff is entitled to the Letters of Administration as prayed for. Hence, this Original Suit

is allowed. Letters of Administration is ordered to be issued in favour of the plaintiff namely S.Anandan, in respect of the property mentioned in the said Will. The plaintiff is directed to duly administer the said property of the deceased. The plaintiff is also directed to execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) in favour of the Assistant Registrar [O.S.], High Court, Madras - 104. There shall be no order as to costs.

sd/.G.C.J

14.08.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/01.12.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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