

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

T.O.S.No.98 of 2013
(O.P.No.529 of 2011)

1. N.Chandrasekhar
2. Smt. S.Gnanaprasuna

... Plaintiffs

Vs.

Smt. S.Jayanthi

... Defendant

Petition under Sections 232 and 276 of The Indian Succession Act XXXIX of 1925 and under Order XXV Rule 5 of the O.S.Rules to grant Letters of Administration with the Will annexed to be granted to the petitioners / legatees, as father and sister, respectively, under the Will of the deceased, having the effect of implementation, which is limited to the State of Tamil Nadu.

For Plaintiffs : Mr. K.S.Madhavan
For Defendant : Mr. Sathish Parasaran

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J U D G M E N T

The petition has been filed by the father and sister of the deceased, seeking Letters of Administration, with the Will annexed. The Will is said to have been executed by the deceased, Saroj Chandra, who died on 05.01.2011. The Will was duly executed by the

deceased on 18.10.2004. Codicil was executed on 24.12.2010. The deceased Saroj Chandra was the only son of the first plaintiff. The mother, Lakshmi, of the deceased, died on 05.02.2003.

2. The deceased had married Srinivasa Jayanthi after the dissolution of his first marriage in FCOP No.2519 of 2003. There was problem with the second wife also.

2.1. The wife deserted the deceased only on account of the incurable disease, i.e., cellulitis. The deceased filed the petition for divorce against his wife. When the case was in final stage, the deceased died on 05.01.2011. The first and second plaintiffs alone were taking care of the deceased and that made the deceased to execute the Will in favour of the first plaintiff. The first plaintiff is the only beneficiary under both the Wills. Only in the absence of the first plaintiff, the second plaintiff is entitled to succeed to the assets of the deceased.

2.2. Under the Will and Codicil, no executor was appointed by the deceased. The first plaintiff, as legatee of the Will, is entitled to Letters of Administration with the Will annexed.

2.3. When O.P.No.529 of 2011 was filed, notice through court and private service was ordered and private notice got served on the respondent. The respondent entered appearance through counsel on

09.10.2010. But no caveat was filed. The respondent was directed to file a Caveat Petition after being furnished with a copy of the Will and Codicil. At that point of time, the respondent did not file the Caveat.

2.4. When O.P.No.529 of 2011 was posted before the learned Master for recording evidence on 12.07.2013, the first plaintiff was examined. Both the Will and Codicil were marked as exhibits. The affidavits of the attesting witnesses were also placed on record. At that stage, the respondent came forward with a Caveat Petition, and thereafter, O.P. was converted into T.O.S.No.98 of 2013. Summons were served upon the respondent, but no written statement was filed.

3. Today also no written statement is filed. Therefore, the defendant / respondent is set exparte. There is no necessity to record the evidence afresh, as evidence has already been recorded at the stage when the petition was not converted into the suit.

4. The only question is whether the authenticity of the Will has been proved before this Court.

5. In order to prove the Will, the first plaintiff, N.Chandrasekhar has been examined as P.W.1. In the evidence, P.W.1 has stated that his son executed Ex.P-1-Will, dated 18.10.2004, and Ex.P-2-Codicil,

dated 24.10.2010. It is further stated that under Ex.P-1, two immovable properties and valuables were bequeathed to him. As per the evidence, after the execution of the Will, one of the residential house at T.Nagar has been sold by the deceased himself and yet another property has been settled in favour of the first plaintiff on 20.12.2010. Under the Codicil, Ex.P-2, one of the property at Chengalpet Taluk has been bequeathed to the father. The name of the three attesting witnesses in the Will and three other attesting witnesses in the Codicil are also spoken to in the evidence. The affidavit of the attesting witness, Mr.Paramaguru, and Mr.Krishnan has been filed.

5.1. From the oral and documentary evidence, it is clear that the execution of the Will has been proved.

6. The death of the deceased on 05.01.2011 is proved through the Death Certificate, filed as Ex.P-3. The second plaintiff has filed an affidavit stating that she has no objection for the grant of Letters of Administration, in respect of the Will and Codicil dated 18.10.2004 and another Will, dated 24.12.2010 in favour of her father.

6.1. The oral and documentary evidence placed before the Court establish the justifiability of the claim made for the grant of Letters of Administration in favour of the first plaintiff.

7. In the result, this TOS is allowed, granting Letters of Administration with the Will annexed, in favour of the first plaintiff. The first plaintiff is directed to execute a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.), High Court of Madras, Chennai – 104. No costs.

30.04.2015

Index: Yes / No
Web : Yes / No
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S.VIMALA, J.,

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